(21,410)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 291.

PERE ALFREDO LUIS BAGLIN, SUPERIOR GENERAL OF THE ORDER OF CARTHUSIAN MONKS, FOR HIMSELF AND ALL OF THE OTHER MEMBERS OF SAID ORDER, APPELLANT,

vs.

CUSENIER COMPANY.

APPEAL FROM AND ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Page.
Transcript from the circuit court of the United States for the southern district of New York	1
Bill of complaint	1
Replication	10
Stipulation as to taking proofs	11
Stipulation as to translations	13
Complainant's *prima facie* proofs	14
Testimony of Marius Dubonnet	15
Paul Brezun	27
Joseph Elisee Cusenier	37
Jean Claude Francois Henri Riviere	59
Victor Nicolet	80
Gabriel Villard	84
Désiré Emanuel Joseph Boiton	111
Henri Leconturier	122
Octave Novel	148
Henri Massignon	157
Reverend Father Baglin	168

	Page.
Complainant's rebuttal proofs	268
Testimony of Louis Pillet	268
Charles Louis Maurice Sanglé-Ferrière	306
—— Cugniasse	322
Julien Chellé	333
Eugéne Cornuchet	341
Jean Claude Rey	349
Octave Novel	358
Jules Fetaz	359
Ignace Rey	363
Léonce Marius Belin	370
Séraphin Rey	377
Joseph Allier	381
Achille Baboin	387
Joseph Margaron	394
Jean Claude Valentin	399
Jean Rey	404
Adolphe Rey	408
Alexis Rey	415
Pierre Charles Lauris	419
Gabriel Villard	429
Lucien Verdant	440
Adolphe Dournon	445
D. E. J. Boiton	456
Henri Jobert	467
André Weiss	475
Stipulation as to taking proofs	579
Testimony of James Turner	581
Wm. Thomas Pheysey	592
Joseph Humphreys	600
Ronald Elliot Cunningham	604
James Scutari Taylor Restell	616
Wm. George Masters	623
Ralph Davis	630
Order amending bill of complaint	633
Complainant's *prima facie* proofs taken in United States	635
Testimony of Henry Batjer	636
Robert S. Elliott	643
Joseph Haan	647
Albert M. Hirshfeld	650
Louis Nova	653
Lawrence J. Callahan	659
Charles W. Oertel	661
John E. Dunwoody	664
Wm. G. Moore	667
John A. Badenoch	670
Sidney S. Darling	672
Grosvenor Nicholas	676
Complainant's exhibits	685
Trade-mark No. 3377, granted F. M. M. Grezier Jan. 25, 1876	685
No. 10897, granted F. M. M. Grezier Jan. 29, 1884	689
No. 3989, granted F. M. M. Grezier Sept. 12, 1876	692
No. 10898, granted F. M. M. Grezier Jan. 29, 1884	695

	Page.
Aubry-Cusenier Co. Circular Letter	697
Exhibit Koenig Letter—Letter of Jules C. Koenig to Batjer & Co., October 31, 1904	699
Exhibit C—Jevne Co. Letter—Letter of C. Jevne Co. to Batjer & Co., October 26, 1904	699
Exhibit Batjer & Co. Trade-mark Co. Agreement	700
Exhibit S—Judgment of the court of Grenoble of May 18, 1905	701
Exhibit 22 (Weiss)—Judgment of the court of appeals of Grenoble of December 12, 1905	725
23 (Weiss)—Judgment of the court of appeals of Grenoble of March 27, 1906	732
24 (Weiss)—Opinion of M. Andre Weiss	741
28 (Weiss)—Opinion given by Messrs. Ernest Glasson and Andre Weiss	774
27 (Weiss)—Decree of the Swiss Federal Tribunal	809
29 (Weiss)—Declaration for correction of Swiss decree	825
Stipulation as to Exhibit Judgment	827
Exhibit Judgment of Federal Court of Rio de Janeiro of May 9, 1907	828
Answer	833
Defendant's proofs taken in France and England	842
Testimony of Leon Hasse	842
Pierre Boutin	851
Emile Gallerand	855
—— Braquessac	860
Wm. H. Garrett	863
Jean Elie Delair	891
Mrs. Caroline Grenier	895
Mrs. Marie Merlin	901
Antoine Dondey	905
Julien Belle	961
Jean Pierre Fege	964
Noel Perret	979
Joseph Nicolas Georges	982
John Mumford	992
Basil Lyte Willis	999
George Frank Herring Grant	1005
Alfred Moore	1007
Benj. Mew Parker	1014
Louis Stephane Tieche	1033
Réné Tieche	1070
Germain Arthur Millon	1072
Jacques Régli	1101
Henri Claverie	1125
Xavier Rocques	1128
Raphael Carbonnel	1166
Alexander Millerand	1177
Henri Lecouturier	1227
Stipulation as to translations	1271
Defendant's proofs taken in the United States	1273
Testimony of Joseph Haan	1273
M. Blanc	1278
Leon Mundel	1281

Page.
Testimony of Francois Chauvelot 1284
Raymond Orteig 1286
Jules Aubry 1291
Exhibit Batjer Circular of 1904 1293
Exhibit Chartreux Advertisement 1296
Exhibit Complainant's New Label 1297
Testimony of Leonard Dresdner 1301
Offers of exhibits, &c 1305
Testimony of Wallace L. Pierce 1309
Testimony of Robert S. Medary 1315
Defendant's exhibits 1324
Exhibit 12—Judgment of July 19, 1905 1324
14—Extracts from jurisprudence 1346
15—Dournon report 1347
21—Extract from the records of the court of cassation 1409
22—Extract from the records of the court of cassation 1411
Exhibit Defendant's Proposed Circular 1413
Exhibit 24—Judgment-roll, civil tribunal of Grenoble 1414
25—Hamburg judgment 1459
Exhibit Haan Order Slip 1472
Exhibit Haan Letter—Letter of R. M. Haan to Cusenier Co., January 17, 1905 1472
Notice of motion to reopen proofs 1473
Proposed order to reopen proofs 1474
Affidavit of Hubert Howson 1476
Judge Lacombe's memorandum opinion 1479
Order denying motion to reopen proofs 1480
Defendant's Exhibit French Associations Law of 1901 1481
Defendant's Exhibit Translation 1487
Stipulation as to additional evidence 1493
Defendant's Exhibit Tunis Judgment 1494
Judgment of March 31, 1903 1502
Judgment of April 23, 1904 1506
Judgment of May 17, 1904 1551
Hearing and submission 1559
Opinion of Judge Hough 1560
Memorandum of Judge Hough 1565
Decree 1566
Petition for appeal 1570
Assignment of errors 1572
Bond on appeal 1576
Citation 1580
Clerk's certificate 1581
Opinion of Judge Coxe 1582
Dissenting opinion of Judge Noyes 1592
Decree 1603
Notice of appeal 1605
Appeal 1605
Assignment of errors 1606
Bond on appeal 1609
Clerk's certificate 1609
Citation 1610
Order granting writ of certiorari and cross-writ of certiorari and directing that this record be taken as a return thereto 1611

Circuit Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK. 2

PERE ALFREDO LUIS BAGLIN, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said Order,

vs.

CUSENIER COMPANY.

In Equity.
" Chartreuse." 3

Bill of Complaint.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK : 4

Your orator, Pere Alfredo Luis Baglin, of Tarragona, Spain, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said order, brings this his bill of complaint against Cusenier Company, a New York corporation, located at and having its principal office and place of business at No. 110 Broad street, in the Borough of Manhattan, City and State

of New York, within the Southern District of New York.

And thereupon your orator complains and says :

I.

That said Order of Carthusian Monks, of the Convent La Grande Chartreuse, generally known as "Peres Chartreux" (Chartreuse Fathers), has for
6 about nine hundred years prior to 1901, continuously occupied a convent at La Grande, near Voiron, in the Department of Isere, Republic of France, and for upwards of four hundred years last past has continuously carried on the manufacture of a certain liqueur or cordial known throughout the world as "Chartreuse," which said liqueur or cordial has been, and now is manufactured by them exclusively, in accordance with a certain secret recipe or formula whereof the said order of Carthusian Monks has been and now is the
7 sole proprietor, and which, by reason of its virtues and excellent qualities has become widely and favorably known, and is, and always has been, known and recognized by the distinctive name "Chartreuse," indicative of its manufacture by the said "Peres Chartreux."

That in consequence of the skill and care exercised by the said "Peres Chartreux" in the manufacture of said cordial or liqueur, and of the merit of said formula, a great demand therefor has been created
8 and still exists throughout the world, which demand your orator and his associates are able and willing to supply.

II.

And your orator further shows that the said Order of Carthusian Monks, known as "Peres Chartreux," is a religious order of voluntary association, that your orator under the title of "Procureur" is the present business head of the said Order or Association, and has

9

charge of and is responsible for the manufacture and sale of the liqueur aforesaid ; and that on account of the great number of Monks, who are the associates of your orator in the Association of said order, it is impossible to join every one of them by name in this suit, wherefore your orator is constrained to bring this suit in his own name on behalf of himself and all of his associates.

III.

10

Further your orator shows that in the year 1904, the said order of Peres Chartreux, in consequence of the enforcement by the French Government of an enactment known as the Associations Act, removed the branch of said convent having charge of the manufacture of said cordial or liqueur to Tarragona, in the Kingdom of Spain, where the manufacture of said cordial or liqueur known as " Chartreuse " is still carried on in accordance with said original secret 11 recipe or formula (which is still the exclusive property of said order) under the immediate supervision of your orator, who, in his capacity of Procureur has custody thereof.

IV.

And your orator further shows upon information and belief that he and his said associates, and their predecessors in said order have, for upwards of three hundred years, made use of the word " Chartreuse " as a 12 trade mark to designate the said cordial or liqueur manufactured by them ; and such trade mark has been used, throughout the world, exclusively for that purpose ; that said cordial or liqueur has been commonly packed in bottles of peculiar design, and packed in cases, both bottles and cases bearing conspicuously the trade mark " Chartreuse," together with other distinctive marks and symbols, such as facsimile of the signature of L. Garnier, who was, about sixty years ago,

13 the predecessor of your orator in the office of Procureur of said order.

V.

That in the year A. D. 1876, the said order by its then procureur, Frere (that is to say "Brother"), Marcel M. Grezier, caused the said name "Chartreuse" to be registered in the United States Patent
14 Office on behalf of said order, as evidenced by certificate of registration No. 3,377, dated January 25, 1876, as by reference thereto, or to a duly authenticated copy thereof, here in Court to be produced, will more fully appear; and that in the year 1884, said order caused a re-registration of said mark by its procureur (Frere Grezier), as evidenced by certificate No. 10,897, dated January 29, 1884, as by reference to said certificate, or a duly authenticated copy thereof, here in Court to be produced, will more fully appear; that
15 said Frere Grezier, on behalf of said order, fully complied with all the laws of the United States in respect to the registration of trade-marks; that said trade-mark had been, prior to the earliest registration aforesaid, and continuously to the present time has been used in commerce between the United States and a foreign country; and that said order has at this time the right to the exclusive possession and enjoyment of said trade-marks.

16 VI.

And your orator avers, upon information and belief, that since the removal of said order from France, certain persons in said country have, without the consent of said order, commenced the manufacture of a cordial or liqueur in imitation of that which has for many centuries been manufactured by your orator and his associates as aforesaid, and are marketing the same under the name "Chartreuse," falsely representing that it is made in accordance with the famous recipe

17

long owned (and still owned exclusively) by your orator, and, for the purpose of injuring your orator and his association and of deceiving the public, have offered the said imitation liqueur to the public in bottles and cases similar in appearance to those long used by your orator and associates as aforesaid, and bearing labels similar to those long used by your orator and associates, and placing thereon the trade-mark "Chartreuse."

18

VII.

And your orator has been informed and believes that the said defendants and each of them, acting jointly, without the consent of your orator and his associates, but in violation of their rights, have imported from France into the United States, at the port of New York, for sale and use, and have sold and used within the Southern District of New York and elsewhere in said United States and the territories thereof large 19 quantities of said spurious liqueur or cordial, in cases and bottles closely resembling in appearance, and bearing labels closely resembling those long used by said Order of Peres Chartreux, as aforesaid, the resemblance being so close as readily to deceive the public and bearing the trade-mark "Chartreuse"; and that the said defendants have thereby gained and received large profits but to what amount your orator is ignorant, and therefore prays a discovery; and that your orator and his associates have been damaged by the 20 said acts of defendants and their confederates to the amount of one hundred thousand dollars. And your orator is informed and believes, and therefore avers, that these defendants are in like manner about to import and receive in the port of New York for sale and use within the Southern District of New York and elsewhere within the United States and the territories thereof, further quantities of the said spurious "Chartreuse," under the trademarks, labels and other distinguishing marks of your orator and his associates, and

21

will thereby cause irreparable injury to your orator and his associates unless this Court grants the relief hereinafter prayed.

VIII.

And your orator avers that the subject-matter here in dispute is of great value, exceeding the sum or amount of two thousand dollars ($2,000), exclusive of
22 interest and costs.

IX.

And forasmuch as your orator and his associates can have no relief save in this Honorable Court, your orator prays on behalf of himself and all of his said associates :

23 (1.) That your Honors will permit him to maintain this suit in his own name on behalf of himself and all of his associates composing the said order of Carthusian Monks (Peres Chartreux).

(2.) That a perpetual injunction, issuing out of and under the seal of this Honorable Court, may issue against this defendant forbidding it, and its associates, attorneys, successors, assigns, agents, clerks, servants, and workmen from

24 *(a.)* infringing the said trade marks or either of them ;

(b.) imitating the said labels or other distinctive markings and features of the genuine "Chartreuse" of your orator and his associates ;

(c.) making use of the name "CHARTREUSE" or any imitation thereof in connection with liqueurs or cordials ;

25

(d.) or in anywise representing that any liqueur or cordial or similar liqueur not manufactured by your orator and his associates or their successors in the said order of Carthusian Monks is the genuine Chartreuse, or is made in accordance with the secret process of the Carthusian Monks, or in any manner trading upon the reputation and good-will of your orator and his associates and their predecessors and successors in said 26 Association.

(3.) That your Honors will grant a preliminary injunction, to the same purport, tenor and effect, as herein prayed for in regard to the perpetual injunction.

(4.) That this defendant may be compelled to account for all the profits, gains, savings and advantages derived or received by it, by reason of the unlawful 27 acts herein complained of ; and that this Court may assess or caused to be assessed the amount of damages sustained in the premises by your orator and his associates ; and that this defendant may be compelled to pay to your orator as the representative of himself and all his associates in the said order of Carthusian Monks, the profits and damages so ascertained ;

(5.) That your Honors will grant unto your orator 28 the costs of this proceeding and such other and further relief as the equity of the case may require.

To this end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may full, true and direct answer make—but not under oath, answer under oath being expressly waived—according to the best and utmost of the knowledge, information, remembrance and belief of the defendant and of its officers and

agents to all the allegations of this bill of complaint as fully and particularly as if the same were repeated, paragraph by paragraph, and the said defendant and its officers and agents thereto severally and specifically interrogated, may it please your Honors to grant to your orator a writ of subpœna *ad respondum* issuing out of and under the seal of this Honorable Court directed to said defendant Cusenier Company, and commanding it to appear and make answer to this bill of complaint and to perform and abide by such orders and decrees as to this Court may seem just.

And your orator will ever pray.

(Signed) ALFREDO LUIS BAGLIN,
Procureur of the Association of Carthusian Monks, on his own behalf and as representing all his associates in said order.

(Signed) By HENRY BATJER,
His Attorney in Fact.

(Signed) PHILIP MAURO,
C. A. L. MASSIE,
Of Counsel.

(Signed) ELISHA K. CAMP,
Solicitor for Complainant.
Office and P. O. address,
277 Broadway,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK, }
County of New York, } ss.:

HENRY BATJER, being duly sworn, deposes and says: I am a member of the firm of Batjer & Company, of 45 Broadway, New York City, which firm has been for about ten years last past the exclusive agents, for the United States of America, of the Order of Carthusian

Monks, complainants herein, for the sale of the cordial or liqueur known as " Chartreuse," and am attorney in fact for the complainant, duly authorized to begin this action in his name, as representing himself and all his associates in said Order ; I have read the foregoing bill and know the contents thereof, and I believe the same to be true. My information is gained from correspondence with European agents of said Order, and from correspondence and conversation with local representatives of the same, and from general reading.

(Signed) HENRY BATJER.

Subscribed and sworn to before me this third day of January, 1905.

(Signed) OTTO M. BIERLING,
Notary Public.

[SEAL.]

37

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Procureur of the Order of Carthusian
38 Monks, &c.,

vs.

THE CUSENIER CO.

In Equity.
No. 8949
(Chartreuse).

Replication.

This repliant, saving and reserving to itself all and all manner of advantage of exception, which may be
39 had and taken to the manifold errors, uncertainties, and insufficiencies of the Answer of the said defendant, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the Answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without this, that any other matter or thing in the said Answer contained, material or effectual in the law to be replied
40 unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true: all which matters and things this repliant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) ELISHA K. CAMP,
Solicitor for Complainant,
90 West Broadway,
New York City.

Dated June 5, 1905.

41

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

BAGLIN vs. THE CUSENIER COMPANY.	In Equity "Chartreuse."

42

Stipulation Re Commission.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto as follows: 43

1. The Complainant herein is to take his proofs between December 15, 1905, and February 1, 1906; the Defendant is to take its proofs between February 1, 1906, and April 15, 1906; and the Complainant is to take his rebuttal proofs between April 15, 1906, and May 15, 1906.

2. For the purpose of taking testimony of witnesses abroad, reasonable notice shall be served on the part 44 of Complainant upon Edmond Kelly, 82 Boulevard Haussmann, Paris, France, as representing Defendant; and in like manner, reasonable notice by Defendant shall be served upon Messrs. Thirion & Bonnet, No. 95 Boulevard Beaumarchais, Paris, France, as representing Complainant.

3. The deposition of witnesses taken pursuant to such notices may be taken before any U. S. Consul, Vice Consul, or Consular agent, in France, Spain, or

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Italy, who may be nearest or most convenient to the witnesses to be examined.

4. The depositions, including questions and answers to such questions, shall be oral but taken down stenographically and transcribed; where French is the language of the witness, questions and answers may be given and taken down in French, if the counsel putting the questions desires it, such French deposition
46 to be translated into English after it has been transcribed from the stenographic notes.

5. Translators to be sworn.

6. This stipulation may be modified or added to by the mutual consent of the above designated European counsel.

7. The U. S. Consular Officer or Officers before
47 whom such depositions shall be given, shall furnish at least one copy thereof to each counsel and shall promptly mail the original with certificate, in a package properly sealed and secured, to the Clerk of the Circuit Court of the United States for the Southern District of New York, in the Post Office Building, in the City of New York, U. S. A., together with sufficient postage for the same, all at the expense of the party on whose behalf the particular depositions have been taken.

48

PHILIP MAURO,
Of Counsel for Complainant.
HOWSON & HOWSON,
for Defendant.

Dec. 1, 1905.

49

IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

PERE ALFREDO LUIS BAGLIN, for Himself and the Other Carthusian Monks, vs. THE CUSENIER COMPANY	In Equity, No. 8949.

50

Stipulation

It is stipulated that the translations forwarded from the American Consulate-General in Paris, France, and from the United States Consulate in Turin, Italy, are 51
correct translations of the depositions given by the several witnesses therein named; and that the said translations, together with the copy of depositions originally taken in England and forwarded from the United States Consulate-General in London, England, may be used as copy from which to print the Record for use in the United States Circuit Court for the Southern District of New York, subject however to correction upon notice and proof; and that the signatures and certificates and the discussions between 52
counsel may be omitted from the printed Record.

New York, December 12, 1906.

ELISHA K. CAMP,
Solicitor for Complainants.
HOWSON AND HOWSON,
Solicitors for Defendant.

53

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said Order,

54

VS.

CUSENIER COMPANY.

In Equity, No. 8949. "Chartreuse."

COMPLAINANTS' PRIMA FACIE PROOFS.

55

American Consulate-General
City of Paris
Republic of France.

SESSION OF WEDNESDAY, January 17th, 1906, at two o'clock P. M.

Present:

FRANK H. MASON, United States Consul-General at Paris, France, Commissioner.

56

MR. J. BONNET, Counsel for the Complainant, assisted by M. BARBANCEY, private secretary, MR. LEGRAS, private interpreter, and MR. BACHRICH, private stenographer.

MR. EDMUND KELLY, Counsel for the Defendant, assisted by MR. LECOUTURIER, liquidator, MR. RIVAUT and MR. ROCQUES, chemist, and private secretary and a private stenographer.

MR. G. DUCLOS, official sworn French stenographer.

57

MARIUS DUBONNET, of Paris, France, a witness of lawful age, having been produced, sworn and examined on behalf of the Complainant, doth depose and say as follows:

DIRECT EXAMINATION BY MR. BONNET:

Q. 1. What is your name?

A. Marius Dubonnet.

Q. 2. What is your profession? 58

A. Agent for the Carthusian Fathers. I have two professions, but I am in the first place agent of the Carthusian Fathers.

Q. 3. And the other one?

A. I am a spirit and wine merchant at Paris.

Q. 4. How long have you been the agent of the Carthusian Fathers for the sale of Chartreuse?

A. Since 1855, from father to son. It was first my father, then my mother and my elder brother, then my elder brother, and since the death of my brother I am 59 alone. For fifty years we have been the representatives of the Reverend Fathers in Paris.

Q. 5. You are the representatives of the Carthusians for Paris and surrounding Departments?

A. For Paris and six Departments.

Q. 6. You are in France the Agent who has sold the greatest quantity of Chartreuse?

A. Certainly. Moreover it was my father who introdueed Chartreuse, a liqueur which had a small sale in the region, it is specially in Paris that it has taken a 60 formidable extension; we have made as much as two million francs a year in the Departments of the Seine and Seine-et-Oise.

Q. 7. It can therefore be said that you have greatly contributed to the popularity of this liqueur?

A. Absolutely.

Q. 8. You have frequently been in contact with the Carthusian Fathers, you are in a position to give us some information?

61

A. We have been not only Agent but almost friends; we were considered as belonging to the family.

Q. 9. Have you heard it said that for several hundred years the order of the Carthusian Monks had its principal convent near Voiron, in the Department of the Isère?

MR. KELLY objects to the question as hearsay.

62

Q. 10. The Convent was inhabited by the Carthusian Fathers (the Convent of the Grande Chartreuse), and the factory of the liqueur was situated at Fourvoirie?

A. Quite so.

Q. 11. Can you produce bottles and labels which were used for the sale of the liqueur of the Chartreuse before the expulsion of the monks?

A. I have brought some bottles—for all has been sold—but here are a few old bottles which recall the
63 mark and the bottle of the Reverend Fathers.

This one is the eighth of a litre, it is absolutely the form of the bottle and the label. (Exhibit A). I have but half bottles left, all are sold. Here is a bottle of 1880: the bottle and the label; it is of the white (Exhibit B). Here is a bottle of green, bearing the Russian label, because in Russia it was shipped with the same label (Exhibit C). I have only brought that.

The three bottles produced by the witness
64 are handed to the Commissioner, to be sent with the Commission and marked:

Bottle of yellow Chartreuse, Exhibit A,
Bottle of green Chartreuse, Exhibit B,
Bottle of white Chartreuse, Exhibit C.

Q. 12. Have you any elixir?

A. No, but I can bring you a bottle of it.

Q. 13. In consequence of an Act of the French Legislature, known under the name of the Law on Associations, of the 1st of July, 1901, and by virtue of

65

proceedings undertaken under this law against the Carthusian Fathers, was their Congregation or Order declared to be an unauthorized Association, that is to say, an association not having the right to exist in France as a Congregation or organization under the said Law? Can you answer me this question?

A. I have not quite understood.

MR. BONNETT repeats the question.

66

A. I will tell you what I think. I think that this law, from a commercial point of view, is iniquitous. Is that what you ask me?

Q. 14. No, I ask you to tell me yes or no. Let me put that you cannot reply to this question.

A. I prefer that.

Q. 15. The monks have left France?

A. Yes.

Q. 16. They have installed a factory at Tarragone, in Spain?

67

A. Quite so, yes.

Q. 17. You have continued to be connected with them in Spain as you were when they lived at the Grande Chartreuse?

A. Quite so.

Q. 18. At the present time the liqueurs which are made at the manufactory of Tarragone are sold by the Union Agricola?

A. Yes.

Q. 19. The Liquidator, Mr. Lecouturier, who has been named by virtue of the provisions of the Law of 1901, manufactures, or has a liqueur manufactured at Fourvoirie? 68

A. Yes, what we call an imitation; it is not the real liqueur.

Q. 20. According to you, is there any appreciable difference between the liqueur sold by the liquidator and the authentic liqueur of the Carthusian Fathers?

A. An enormous difference: it is that the liqueur of the liquidator is not good, resembles in no manner the

69 liqueur of the Carthusian Fathers. That is what I contend and what all the big merchants contend, and all connoisseurs of the product. It is all the difference between the two products, whereas the liqueur of the Carthusian Fathers made at Tarragone is absolutely the same as that they manufactured long ago in France, and customers realize it as they are beginning to come back to them. Besides I may add that even when the Fathers alone made their liqueur most of the distillers
70 made imitations which they tried to sell in our bottles. They of course continue, but they have never succeeded in making the liqueur of the Carthusian Fathers. It is a liqueur apart, which has its secret, that no one can approach. I know all the distillers of Paris: never have they been able to get a liqueur as good.

Q. 21. I wish to insist on one point. In your opinion is the liqueur that the Carthusian Fathers are making at the present time at Tarragone identical to that
71 which they previously manufactured in France?

A. Absolutely the same, it is the same liqueur, made in accordance with their secret, which is perfect; very much of it is drunk.

Q. 22. Have you remarked this opinion among your customers?

A. Quite so. Every day friends who take this liqueur say to me: "It is perfectly good." At the beginning there was perhaps some alcohol not quite so old, but now it is perfect, better cannot be made.

72 Q. 23. The affair which interests us, the case in litigation which interests us against the Cusenier Company, in view of the knowledge you have of the business practice to which it pertains, well represents a value at least equal to 2,000 Dollars?

A. I do not understand.

Q. 24. It is necessary to know, from the point of view of the competency of the Courts, if the suit which is pending between the Carthusians and the Cusenier Company in the United States relates to commercial op-

73

erations sufficiently important that it could be said that the litigation represents more than 2,000 Dollars.

A. Quite so.

Q. 25. Among your customers and in the course of your long commercial career, both your own commercial career and that of your predecessors, have you remarked or have you not remarked that the fame of the "Chartreuse" liqueur took its origin from the makers and not from the place where it was made?

74

Mr. Kelly objects to the question as leading.

A. It is certain that the consumer took the liqueur because it was made by the Carthusian Fathers, who knew how to make a good liqueur and to take pains with it. One does not trouble about the place, but about those who make the liqueur.

Q. 26. Who brought out the liqueur? Was it the Fathers who brought it out?

A. It was the Fathers, Father Garnier who sold it, 75
who sold the liqueur in that region. But as to the merchants who brought it out in the world, it was we in Paris who did it; it was my father who was the first element to bring out the product, and we reached a high figure, about 2 million francs in the Department of the Seine.

Cross-examination by Mr. Kelly:

x-Q. 1. You have spoken of a secret, Mr. Dubon- 76
net; do you know it, the secret?

A. Not at all. I know that the good Fathers had a secret, that they have kept it, that they work it; nobody knows it.

x-Q. 2. How do you know that?

A. I have always been told that. No one has ever succeeded in making a liqueur like theirs; there is a manipulation that they alone know.

x-Q. 3. The reason why you are sure that there is a

77 secret is that no one has ever succeeded in making a similar liqueur?

A. Yes, Sir. I have tasted some of them, liqueurs, infringements, imitations, and never has anyone succeeded in making a liqueur as good as that of the Carthusian monks; it is like our own productions, you must have a trick and know what to put in.

x-Q. 4. You say that no one has ever succeeded in making a liqueur as good?

78 A. Yes.

x-Q. 5. The secret then is only connected with the question of quality?

A. Of course. As there is a mixture of products you must know how to make a mixture in the proportion which permits the consumer to appreciate the product; that as a matter of fact is a secret.

x-Q. 6. Which do you think are the best imitations?

A. I do not know, there are not many.

x-Q. 7. Which are the best?

79 A. I have tasted many products of different firms; I cannot say which are the best or the worst.

x-Q. 8. Do you know Mr. Bonnal's imitation?

A. Yes, it is very bad.

x-Q. 9. You think that it is very bad?

A. Yes.

x-Q. 10. Do you know that Mr. Bonnal pretends to possess the secret?

A. Everybody says that.

x-Q. 11. Mr. Bonnal is an old Carthusian, is he not?

80 A. I beg your pardon, a former Brother, a servant; he was never a Monk.

x-Q. 12. And Mr. Garnier?

A. Garnier, of Enghien? Once on a time we had him punished as a counterfeiter.

x-Q. 13. That does not prevent him making a liqueur?

A. Which is worth nothing. He himself makes an Abricotine and brings actions against those who imitate it.

81

x-Q. 14. And the liqueur which is called the "Semblable"?

A. It is worth nothing, it is rubbish.

x-Q. 15. Does it slightly resemble Chartreuse?

A. Not at all.

x-Q. 16. It does not resemble it at all?

A. It has a little taste of it if you like, but it has no savour, it is not made with wine-alcohol. You may ask me about all the marks that are known, they are worth nothing, they will never make the real Chartreuse, they cannot. 82

x-Q. 17. If you were given a glass of the "Semblable" for example to taste and you did not know where it came from what would you call it?

A. That is very delicate; to taste you must be quiet in your office. If the glasses are mixed we will always find out the true ones, but it is a process I would not undertake in public.

x-Q. 18. I ask you what you would do if you had before you a glass of Mr. Garnier's liqueur? What would you say, how would you describe it? 83

By Mr. Bonnett: State which Garnier.

By Mr. Kelly: Any Garnier.

By Mr. Bonnett: Is it the real one who has put his name on the label?

By Mr. Kelly: No, the imitator.

A. I do not know any imitator. I formerly knew Garnier, of Enghien, who was condemned. 84

x-Q. 19. Let us take Bonnal. How would you describe Bonnal's liqueur?

A. When he sells it as Bonnal's liqueur he has the right to. When he sells it as Chartreuse it is different. What does he do? He sells it in casks, the contents of which are put in Chartreuse bottles.

x-Q. 20. Does Bonnal's liqueur resemble Curacao?

A. Not at all.

x-Q. 21. Does it resemble Anisette?

A. Not at all.

85

x-Q. 22. Does it resemble Kummel ?

A. Not at all.

x-Q. 23. Does it resemble Chartreuse ?

A. He tried to imitate Chartreuse.

x-Q. 24. You are sure then that this liqueur resembles Chartreuse ?

A. I know a little behind the scenes. Bonnal does not sell Chartreuse in bottles, he has sold a quantity of it in casks which has afterwards been sold in our
86 bottles.

x-Q. 25. Do you know a liqueur which is called " Liqueur Jaune " ?

A. I do not know who makes it.

x-Q. 26. What is it ?

A. It is a liqueur which tries to resemble Chartreuse.

x-Q. 27. For what purpose is it intended ?

A. To fill the real bottles of the Carthusian monks, to be sold to clients as real Chartreuse.

87 x-Q. 28. Therefore there is a well-known liqueur on the market that resembles Chartreuse in such a manner that when you come across it you say: " That is an imitation of Chartreuse ? "

A. Yes.

x-Q. 29. In what do all these imitations differ from Chartreuse itself?

A. For any one who knows Chartreuse as I know it, as a good consumer who is used to it, when they give him an imitation he recognizes it on the palate.
88 What is the difference? That depends on the maker.

x-Q. 30. It needs a delicate palate to taste it, the ordinary public does not distinguish it ?

A. Yes, it perceives it all the same.

x-Q. 31. The laymen distinguish it with difficulty?

A. No, there are some people who recognize good liqueur very well.

x-Q. 32. The difference is a difference of quality ?

A. Of delicacy, of quality, taste.

x-Q. 33. Is it a difference of quality or not?

A. It is enormous, the quality.

89

x-Q. 34. For you the liqueur of the Carthusians is by much the best quality?

A. Yes, because it is the better made, with wine alcohol.

x-Q. 35. But the imitations resemble it in that?

A. That depends upon what the makers put in it. Naturally they always try to make their productions resemble the real liqueur.

x-Q. 36. Then it is a question of quality?

90

A. Absolutely.

x-Q. 37. Do you know of what the secret of the Carthusians consists?

A. Not at all.

x-Q. 38. Do you know if it is a question of plants?

A. I cannot answer you.

x-Q. 39. You do not know whether it is a matter of process?

A. Yes, I think it is a matter of manipulation, of mixing the plants.

91

x-Q. 40. Is it a question of proportions?

A. It may be so, I do not know at all.

x-Q. 41. You do not know the secret at all?

A. I know that I had a good article to sell, and we have sold quantities and shall continue.

x-Q. 42. Since when have imitations been made?

A. Proceedings have always been taken, for thirty or thirty-five years they have been taken, ever since it had a success. As soon as an article has a success it is imitated.

92

x-Q. 43. For thirty years an article has been made which resembles Chartreuse but is of an inferior quality?

A. All the distillers of Paris and the provinces make a yellow liqueur, like they make a Curacao, and they sell them in casks and jars to be put into our bottles. That is the sore point of all marks, even the present liquidator will have the same bothers.

x-Q. 44. Since when has this yellow liqueur been made?

A. Which?

93

x-Q. 45. That which you call the Liqueur Jaune?

A. For years, I have known that for thirty years; there has always been a yellow liqueur made for 25 to 30 years.

x-Q. 46. The general recipe for the manufacture of Chartreuse is well known, is it not?

A. No.

x-Q. 47. It is published in all the text-books?

A. I think there is a book which gives the way of
94 making Chartreuse and Curacao, that exists, the distillers must have a recipe.

x-Q. 48. Every distiller makes Chartreuse?

A. No, he makes a yellow liqueur and sells it to his customer and lets him find out. He sells a yellow liqueur by the cask or demijohn; he sells to wine merchants or to cafés 25 to 30 litres in a demijohn. The purchaser does what he likes with it. What does he do with it? It is very simple.

x-Q. 49. Do you know Mr. Duplais' book?

95 A. No.

x-Q. 50. He is a known author, is he not?

A. I do not know him.

x-Q. 51. Do you know the names of the authors who have published the recipe of Chartreuse?

A. No.

x-Q. 52. Will you tell me if according to you Chartreuse can be made without having the secret of the Carthusians?

A. No, it is impossible. I have had the honor of
96 being with them for 33 years, I have tasted numerous imitations, and never * * *

x-Q. 53. A liqueur can be made which to the public will be Chartreuse, that will be of an inferior quality?

A. Perhaps, yes.

x-Q. 54. Do you know the liqueur made by Mr. Lecouturier?

A. Yes, I have tasted it.

x-Q. 55. Is that liqueur good?

A. I found it very bad.

97

x-Q. 56. Is it as bad as the liqueurs made by the other imitators?

A. It is worth about as much.

x-Q. 57. You could make sure of distinguishing this liqueur from the real Chartreuse?

A. I do not know if I ought to reply. I have tasted liqueurs enough; but one can be deceived. When I taste I taste calmly, wisely, I take precautions.

x-Q. 58. Will you make the experiment now?

A. No. I request that it may be put in the minutes 98
that I misunderstood the question. You asked me if I am capable of recognizing the liqueur of the liquidator, if I can taste it in comparison with the liqueur of the Carthusian monks. Well, yes, I can recognize it, I taste it often.

x-Q. 59. Will you do so at once?

A. No, because it is very delicate.

By Mr. Kelly: I wish to state that I am quite ready to make the experiment and that I 99
offer to do so at once, the witness refuses.

Re-direct Examination by Mr. Bonnet:

Re-d. Q. 1. Do the best imitations differ notably from the best Chartreuse?

A. Necessarily, never have I seen a drinkable imitation, never. To any one who is used to drink Chartreuse there is an enormous difference when you taste an imitation.

Re-d. Q. 2. Just now you said that real Chartreuse 100
differed from the imitations in the quality. What do you understand by quality?

A. By the quality; that is to say by the products, especially by the alcohol employed by the Carthusian fathers. That is the great point, to make a good product there must be good alcohol.

Re-d. Q. 3. Does alcohol alone play a part in the Chartreuse?

A. A little necessarily. There must, moreover, be the mixture of the other products that the Carthusians

101

put in their liqueur. I do not know it. I know that it is a liqueur out of the common, which is greatly liked, since without any advertisement they have succeeded in reaching a considerable figure. To bring out a product without an advertisement!

Re-d. Q. 4. In tasting an operation which can be made *ex-abrupto*, or must it be made in special conditions in order to appreciate properly?

A. Yes, in the first place to taste no matter what it
102 is necessary to be still, prepare for the business, taste an article, drink a glass of water afterwards—it is a real labor. That is why I would never undertake to sample anything in public. At home the samples are numbered, I taste them, I recognize them. In the matter of wine, cognac, or no matter what it is very delicate.

RE-CROSS-EXAMINATION BY MR. KELLY:

103 Re-x-Q. 1. You said that you had never seen a drinkable imitation. Will you go so far as to say that the liqueur now made by Mr. Lecouturier is not drinkable?

A. I have found it bad.

Re-x-Q. 2. And you find that it is not drinkable?

A. No, it is not good.

Re-x-Q. 3. Drinkable?

A. Drinkable, the expression is a little strong, it is not delicate for anyone used to the real liqueur.

104 Re-x-Q. 4. Then it is in fact but a simple difference of delicacy?

A. Of everything, of delicacy, of bouquet, of all that you like.

Re-x-Q. 5. Has it not the same taste of the Chartreuse of the Carthusians?

A. No, I do not find it so.

Re-x-Q. 6. Nearly?

A. All those who try to make liqueurs like Chartreuse strive to get the taste and the bouquet, but it is not the same thing.

105

Re-x-Q. 7. Not exactly, but nearly so, is it not?

A. Yes, like quinquinas are made, pretty near but it is not good.

Re-x-Q. 8. Everybody can make quinquinas?

A. No, everybody does not know how to make quinquinas. I have tasted in travelling thousands of samples—

Re-x-Q. 9. There are some that are good, others bad?

A. There are not many which are good. 106

Re-x-Q. 10. There are differences between quinquinas, especially a difference of quality, is there not?

A. Yes.

MR. KELLY requests that the Commissioner record that he (Mr. Kelly) produces bottles to make a test, to which witness objects.

107

SESSION OF THURSDAY, January 18th, 1906, at 2 o'clock P. M.

Present—Parties same as before.

PAUL BREZUN, of Marseilles, France, temporarily sojourning in Paris, merchant, a witness of lawful age, having been produced, sworn and examined on the part of the plaintiff, doth depose and say as follows:

108

DIRECT EXAMINATION BY MR. BONNET:

Q. 1. Will you give me your name, your christian name and your profession?

A. Paul Brezun, merchant.

Q. 2. Where is your residence?

A. Marseilles.

Q. 3. How long have you been the agent of the Carthusian Fathers?

A. For over twenty-five years.

109

Q. 4. General agent or private agent?

A. General agent, general in every sense of the word.

Q. 5. Have you been and are you frequently in contact with the Carthusian Fathers?

A. I have been almost daily at Voiron; at the present time I am also as often as possible. It is very frequent, by the journeys that I make to Spain or to Italy.

110 Q. 6. What was previously the head quarters of the Carthusian Fathers?

A. It was the Grande Chartreuse.

Q. 7. Where was the factory?

A. At Fourvoirie, Saint Laurent du Pont.

Q. 8. Who attended to the manufactory?

A. It was the Carthusians, exclusively.

Q. 9. To where have they at the present time removed their factory?

A. To Tarragone, Spain.

111 Q. 10. How was it brought about that the Carthusians left France?

A. By the events that everybody knows: the law of 1901 and the expulsion at the end of April, 1903.

Q. 11. Who puts on sale at the present time the products manufactured at Tarragone? Who puts them on sale.

A. It is the Carthusians, evidently; it is the Union Agricola.

Q. 12. Is the Chartreuse made at the present time
112 at Tarragone, from the point of view as to quality, the same as was previously made by the Carthusian Fathers?

A. Absolutely the same.

Q. 13. What is the opinion of your customers on that subject?

A. It does not vary; customers know perfectly well the liqueur made by the Carthusian Fathers and only ask for that when they apply to us. I do not even know why they insist, but in the majority of the letters that we receive they always say: "We want the

113

liqueur of the Carthusian Fathers and no other than that of the Carthusian Fathers." They insist even.

Q. 14. In your opinion, is there a difference between the liqueur of the Carthusian Fathers and the liqueur made by Mr. Lecouturier?

BY MR. KELLY: I object to the question, the witness not yet having qualified as an expert.

BY MR. BONNET: He is Agent, I ask him the opinion of the customers. 114

BY MR. KELLY: And his personal opinion: it is to that question that I have an objection to offer.

BY MR. BONNET: He is a spirit merchant.

BY MR. KELLY: I simply ask that my objection be entered on the record.

A. Immense, like the night from day, absolutely.

Q. 15. Do you frequently taste the liqueur of the liquidator? 115

A. That must be done, evidently. It is necessary that I keep myself posted of the progress of his distillery, that I know, that I may be able to talk about it with my customers.

Q. 16. The cause which is now in litigation in the United States, does it comprise, in your opinion, a value superior to 2,000 dollars?

A. I should think so, considerably more.

Q. 17. In your opinion, what is the origin of the fame of the Chartreuse liqueur? 116

A. Evidently it is on account of the quality of the liqueur in the first place, and then it is on account also, very much, of the name of the makers. It is made by the Carthusians, that is perhaps its principal fame, even without "perhaps."

CROSS-EXAMINATION BY MR. KELLY:

x-Q. 1. You have said that Chartreuse was made exclusively by the Carthusians. What do you mean by that?

117

A. It is alsolutely made by the Carthusians.

x-Q. 2. But do not the Carthusians employ many people?

A. There are laborers for washing the bottles, move the barrels, load the boxes of liqueur, etc., but the liqueur is made absolutely only by the Carthusians; that I affirm?

x-Q. 3. By whom is the pounding done, for instance?

118

By Mr. Bonnet: I object to certain questions which may bring out the divulgence of the secret of the fabrication. If I consider that certain of these questions will lead to this divulgence I will ask the witness not to reply.

By Mr. Kelly: I will put the question all the same?

A. I do not understand what you mean by the
119 pounding.

By Mr. Bonnet: Do not reply.

x-Q. 4. You refuse to reply?

A. Yes, even more so as I do not understand.

x-Q. 5. Yet the word "pilage" is quite a French word.

By Mr. Bonnet: I beg that the witness will
120 not reply, and this is the reason: It is that by replying to this question whether pounding is done or is not done.

x-Q. 6. I know that the pounding is done, and everybody knows it, is it not so, Sir.

A. I cannot answer.

x-Q. 7. You refuse to reply?

A. I will not reply.

x-Q. 8. You have said, I think, that the liqueur made to-day by the Carthusians is of absolutely the

121

same quality as the liqueur made at the Grande Chartreuse?

A. Yes, Sir.

x-Q. 9. Are you perfectly sure of it?

A. Perfectly sure.

x-Q. 10. You are a taster by profession?

A. I am obliged to be.

x-Q. 11. You are sure you are able to declare under oath that the quality to-day is the same as the quality before.

122

A. Perfectly.

x-Q. 12. Do you know with what plants the Chartreuse is made?

By Mr. Bonnet: I ask the witness not to reply.

A. Yes; I will not say. I have sworn to say the truth. I have been the agent of the Carthusians for 25 years, I know a few little things, but the absolute exact 123 truth is that I do not know the secret; I say that and repeat it under oath, I am unacquainted with the secret. But I know that there is a quantity of plants, that I will not say, that I am not able to say.

x-Q. 13. Do you know a little of the literature on the question of distilling, the books in which these questions are dealt with?

A. No.

x-Q. 14. You do not know the treatise of Mr. Duplais, which has had seven editions? 124

A. I know it by name, I have not studied it.

x-Q. 15. You have heard speak of it?

A. Yes, but I have not studied it.

x-Q. 16. But as you are a taster you ought to know a little what Chartreuse is?

A. Probably, Sir.

x-Q. 17. And you ought to know that there are in the trade many imitations of Chartreuse?

A. I know it too well, unfortunately.

x-Q. 18. Do you know what plants, what flowers

125 enter into the composition of the imitations of Chartreuse ?

A. I am unable to reply.

MR. BONNET : You can reply if you know.

WITNESS : I find it useless to reply, I prefer not to reply to such a question.

BY MR. KELLY : I warn you that if you refuse to reply to the Cross-Interrogatories that it
126 completely annuls your testimony.

BY MR. BONNET : I am convinced that the witness has not understood whether you asked him for information about the liqueurs which are imitations or information about the liqueur of the Fathers. As to the liqueur of the Fathers I insist that he does not reply, but about the liqueurs which are imitations it is for him to answer if he thinks he is able to do so.

127 x-Q. 19. Do you know what flowers, what plants enter into the composition of the imitations of Chartreuse ?

A. I beg your pardon, I had not understood at all. I have just passed through a terrible sorrow, and I have a buzzing in the ears * * *

I can reply to that ; as many imitators, as many different plants perhaps. There are some plants are there not, which people think they know the essence of it is above all mint and pink which predominate.
128 Add to that,—it is not a joke, please remember, plenty of pepper also, pepper.

x-Q. 20. And you think it is only these three things ?

A. There are many others, but I have never analysed myself or had these imitations analysed. I was not even entrusted with protecting the mark, it is by hearsay * * * I have been brought up, as it were in these arcana.

x-Q. 21. At least the taste of the Chartreuse made by the Carthriusians is a very characteristic taste ?

129

A. I believe I understand you to ask if the taste is quite characteristic? Certainly, Sir.

x-Q. 22. Are there not imitations of Chartreuse of which the taste is characteristic in the same way?

A. There are perhaps among the number some which approach it a little, but a cultivated taste after all still recognizes it.

x-Q. 23. Do you consider yourself capable of recognizing them?

A. By being careful, yes, I think. I do not make a 130
special business of that, I do not do it in a general way.

x-Q. 24. In spite of that you are sure you could distinguish real Chartreuse from all the other Chartreuses?

A. I am not often deceived.

x-Q. 25. Do you consider yourself capable to distinguish the Chartreuse made by the Carthusians from those made by the imitators?

A. Certainly. 131

x-Q. 26. Will you give a proof of it at once?

A. No, it is necessary to do that in the quiet of the office, when resting, with due consideration; that cannot be done in the state of nervousness in which I am at present.

x-Q. 27. What are, in your idea, the best imitations of Chartreuse?

A. There are so many of them. Besides, in my opinion, they are all bad.

x-Q. 28. Very bad? 132

A. Yes, I find them all bad.

x-Q. 29. For example the imitation of Mr. Bonnal?

A. Bonnal's imitation? It does not resemble Chartreuse, no more than the night does the day. I maintain that Bonnal's imitation does not resemble Chartreuse in any way.

x-Q. 30. Neither that of the "Semblable"?

A. Still less.

x-Q. 31. Do you know on the market a liqueur that is called the yellow liqueur ("Liqueur Jaune")?

133

A. There is yellow liqueur everywhere.

x-Q. 32. What is it?

A. It is a liqueur made I do not know how. The essential thing in making this liqueur—and it is made at Voiron, Grenoble, Marseilles—there is no other consideration in making this liqueur than to approach the color of Chartreuse. It is sold to the keepers of cafes for filling the bottles.

x-Q. 33. Of the color of Chartreuse, and, permit me
134 to terminate my question, of the taste of Chartreuse?

A. The taste? upon my word, no; I deny it completely.

x-Q. 34. The imitators do not even try to imitate the taste?

A. They do not know how. I know pertinently that these liqueurs are sold very cheaply, they cannot reach the quality. The essential thing for the liqueur jaune, no matter where it is made, is the color, so as to fill an original bottle. That is the object, and I do not
135 believe that the manufacturers have any other in view. Moreover, they always sell very cheaply.

x-Q. 35. There exist on the market many imitations of Chartreuse of which a few at least have the characteristic taste?

A. I deny it.

x-Q. 36. In that case you ought to be quite disposed to prove what you say by accepting the test?

A. Yes, we will accept it, if you wish, but not here of course.

136 x-Q. 37. Not before the Commissioner?

A. Before whom you like, but not at a time like this. It is necessary to be quiet at home, to have the head clear, the stomach free, water near by all ready to wash the mouth. I beg your pardon for giving all these details, but it is quite an affair when you want to do it conscientiously.

x-Q. 38. You have tasted the liqueur made by Mr. Lecouturier?

A. I taste it from time to time.

137

x-Q. 39. What have you to say about it?

A. I do not come here to make compliments. I find it bad.

x-Q. 40. As bad as the others?

A. Absolutely.

x-Q. 41. So you are quite ready to make the test concerning these two liqueurs?

A. There is no way of being deceived.

x-Q. 42. Will you tell me how you are disposed now that this test be made? 138

A. It will perhaps be difficult, as I am only here temporarily; my business calls me elsewhere.

x-Q. 43. Therefore you decline the test?

A. I will have it made by one of the people of my firm. It is not necessary that it be I absolutely: I cannot remain here eternally.

x-Q. 44. You can produce a taster who will be able infallibly, five times in six, to distinguish between these two liqueurs without knowing them?

A. It is evident that in such a case as that there may 139 be surprises, it is very difficult, tasting. I do not know if I am speaking to a man who grasps it, but it is difficult. A man who is ill, a man who has the stomach upset, to use a vulgar expression, will say to you: "To-day I cannot do it." A man who had dined too well would have his taste obliterated for a certain time.

x-Q. 45. It is a little bit the trade of a taster not to be ill?

A. Perhaps I am hasty in telling you I am a taster; 140 that is to say that when liqueurs are brought to us I am not deceived as a rule, but it is not my profession.

x-Q. 46. So it is not quite so easy to distinguish the liqueur made by the Carthusian Fathers and the liqueur made by Mr. Lecouturier?

A. Yes, indeed, it is easy.

x-Q. 47. You say "It is easy" when I put the question in one way and "It is difficult" when I put it in another way.

141 A. Well, to call the thing by its real name, I declare to you that I do not think it is a difficult thing.

x-Q. 48. Well then, why will you not tell us at once in which glass of the two is the Chartreuse of the Carthusian Fathers?

A. That, I cannot accept. I am travelling, I am obliged to take precautions; I am living on almost air and fresh water, I cannot accept.

x-Q. 49. So it is not so easy as all that?

142 A. Yes, indeed, it is easy; but it is necessary to bring into consideration the state of a man. I am under the terrible blow of death, I am broken down; I am not in a fit state.

RE DIRECT EXAMINATION BY MR. BONNET:

Re-d. Q. 1. You have stated, Mr. Brezun, that it was easy to distinguish the liqueur, particularly Mr. Lecouturier's from the liqueur of the Carthusian
143 Fathers, and you added that nevertheless the tasting, in order that it may be made under proper conditions, should take place when quiet and away from any environment which might cause any nervousness to the taster. I want to know from you if in your daily experience or almost daily experience it has ever happened to you to be deceived when you have had an occasion to make a comparison between the liqueur of the Carthusian Fathers and that of Mr. Lecouturier?

A. I do not taste the liqueur of Mr. Lecouturier
144 every day; I taste it occasionally, and I have tasted it above all in order to see the progress that it was making; it has made none. In the few tastings in which I have indulged I have never been deceived, and nobody around me has been deceived by it.

145

SESSION OF MONDAY, January 22nd, 1906, at 2 o'clock p. m.

Present: Parties same as before.

JOSEPH ELISEE CUSENIER, of 226 Boulevard Voltaire, Paris, France, distiller, a witness of lawful age, having been produced, sworn and examined on behalf of the Complainant, does depose and say as follows:—

DIRECT EXAMINATION BY MR. J. BONNET, representing the Complainant: 146

Q. 1. Will you let me know your name, you christian name and your profession?

A. Joseph Elisee Cusenier, distiller, living at Paris, at 226 Boulevard Voltaire.

Q. 2. Do you know whether the Carthusian Fathers made Chartreuse formerly at the Monastry at Fourvoirie?

A. Yes, Sir, they must have made it as they sold it. 147

Q. 3. Do you know that they have been expelled from France?

A. Yes, Sir.

Q. 4. Do you know if they have installed a factory at Tarragona?

A. I have not seen it, I have heard so.

Q. 5. Who is the Liquidator of the property of the Carthusian Order, who has been appointed by the Courts?

A. It is Mr. Lecouturier, I think. 148

Q. 6. Were you entrusted by Mr. Lecouturier with the manufacture of Chartreuse?

A. Yes, Sir.

Q. 7. At what date were you entrusted with this manufacture?

A. July 5th, 1903, I believe. 1904 at least: it was 1904, was it not Mr. Lecouturier?

BY MR. LECOUTURIER: You permit me to reply. July 5th, 1904, that is the exact date.

149

Q. 8. Have you made a contract with Mr. Lecouturier on the subject of the manufacture ?

A. Yes, Sir.

Q. 9. And of the sale ?

A. And of the sale, it was included in the contract.

Q. 10. Can you produce this contract ?

A. I have not got it with me.

By Mr. Kelly : I object to that question. I
150 do not see the connection between the contract made between Mr. Cusenier and Mr. Lecouturier and the question at issue.

By Mr. Bonnet : The connection will presently appear, but I put the question again.

Q. 11. Are you disposed to hand a certified copy of the contract to the Consul (the Commissioner) ?

A. I do not see the use.

Q. 12. You refuse then, will you answer me yes or
151 no ?

A. If there was absolute necessity, if it were exacted, if the law obliged me to comply I would do so, but I do not see the use of putting in the hand of a third person things which only concern the Liquidator of the Congregation and myself.

Q. 13. You refuse to hand the Commissioner the contract which was made between the liquidator and you ?

A. You are putting a very delicate question to me ;
152 that depends under what form. If the things would be kept secret I am willing, if it is to divulge to third parties—

By Mr. Bonnet : It is to be produced before the Court of the State of New York, naturally.

By Mr. Kelly : I wish to ask Mr. Bonnet if he thinks that Mr. Cusenier has the right to produce this contract ?

By Mr. Bonnet : As I propose to put the same question to Mr. Lecouturier I begin by putting it to Mr. Cusenier.

153

Q. 14. You refuse to produce the contract drawn up between Mr. Lecouturier and yourself ?

A. At the present moment I have not the right to produce it to anybody without the authority of Mr. Lecouturier.

Q. 15. With the permission of Mr. Lecouturier will you produce it ?

A. He will produce it himself. You will have no need of mine, it is his business.

Q. 16. And you will make no objection to his pro- 154
ducing it ?

BY THE COMMISSIONER : What did you say in reply to the question ?

A. No objection.

Q. 17. Will you reply to this question. Will you make no objection ?

A. I answer you I have no objection to make at the present time. 155

Q. 18. At what date did you begin the manufacture of the liqueur on Mr. Lecouturier's account ?

A. I cannot tell you to a day or so. If I had known that this question would be put I should have taken precautions.

Q. 19. To about a month ?

A. About 50 or 55 days after, that is to say in the month of September or October. I have not the precise dates.

Q. 20. Reply according to your recollections. 156

A. In the beginning of October, 1904 ; yes, in the same year.

Q. 21. Did the Liquidator give you a recipe to help you in the manufacture ?

A. No, sir.

Q. 22. The formula which you use, is it a formula which comes from you, which belongs to you ?

A. Of course, it comes from me, it comes from my researches. When I say "of myself" I do not mean

157 myself personally, but I am speaking of the collaboration of my staff, of scientific men or scholars.

Q. 23. In a word, this formula has been obtained by the collaboration of your staff and scholars.

A. Yes, and of—Yes, of course, of scholars;—put scholars.

Q. 24. It is not then the formula used by the Carthusian Fathers?

A. In order to answer that it would not be difficult;
158 they have only to give theirs and we to give ours, and see if they are quite the same.

Q. 25. Do you know the formula of the Carthusian Fathers?

A. Do they know mine?

Q. 26. I beg your pardon, I put a question to you, you ought to reply by yes or by no and not question me.

A. I know nothing about it.

Q. 27. You do not know the formula of the Carthusian Fathers?

159 A. I know nothing about it I reply to you.

Q. 28. Do you know it or do you not know it?

A. I know nothing about it.

Q. 29. You refuse then to reply to the question that I put to you?

A. Because I have been told that I must not lie; in replying in one way or the other I run a risk of lying.

Q. 30. Then you refuse to reply to the precise question that I have put to you, that is to say, if you know the formula of the Carthusian Fathers?

160 A. I continue the same answer: I know nothing about it.

Q. 31. Before you were intrusted with the manufacture by the Liquidator did you not make a chartreuse?

A. We made a "yellow liqueur" like all the other French makers do.

Q. 32. The formula that you used for this liqueur was not the same which you use at the present time?

A. No, Sir, decidedly not.

Q. 33. Have there never been any contests between

161

you and the Carthusian Fathers or their representative on the subject of the yellow liqueur?

A. Yes, Sir, we have had a case; besides it is set forth in all their works.

Q. 34. On what date.

A. I do not know, I was not there; I did not manage the firm at that time, but it is printed. Dubonnet used it enough. I know nothing about the date.

Q. 35. Where did this case take place?

A. In Paris. 162

Q. 36. Were you condemned?

A. Yes, Sir.

Q. 37. With what were you reproached?

A. I know nothing about it, I do not remember; I have not even read it. It is printed; it is easy to see, you will have the whole of it.

By Mr. Kelly: Will you return to the question, to which the gentleman has replied, that he did not manage the firm of Cusenier? 163

Q. 38. Who managed the firm at the time that this judgment was incurred?

A. Eugene Cusenier senior, the founder of our firm.

Q. 39. Can you give the formula which you use for making the liqueur on behalf of the Liquidator?

A. No, Sir.

Q. 40. It is therefore a secret?

A. No, Sir.

Q. 41. Can you communicate it then as it is not a 164 secret?

A. No, Sir.

Q. 42. In the contract entered into between you and the Liquidator is there a question of this secret?

A. No, Sir.

Q. 43. In the contract, has the event been foreseen of you ceasing the manufacture, and has it been foreseen in that case what is to become of this secret?

A. I do not remember—This secret? Besides I have declared that there was no secret.

165

Q. 44. I will say "the formula" then. Can you, after the cancelling of the contract continue to manufacture from this formula, from the formula that you use at the present time?

A. Of course I could, but I should not do it.

Q. 45. Do you manufacture still at the present time?

A. Yes, Sir.

Q. 46. Who supplies you with the plants which are necessary for the manufacture?

166 A. I have not to divulge that.

Q. 47. Then it is a secret?

A. Why no, sir. Will you define the word "secret" to me in the first place? Perhaps I will be able to answer you in a more precise manner.

Q. 48. Does it concern a secret of manufacture, that is to say a process that is of interest to hide so as to avoid competitors knowing it?

A. That goes without saying, but are these processes unchangeable? Can they be unchangeable?

167

By Mr. Bonnet: I again beg that the witness will not put questions to me. I have to interrogate him, I have not to answer him. I repeat my question:—

Q. 49. Does it concern a secret of manufacturing, that is to say a process that is of interest to hide so as to avoid competitors knowing it? Will you reply?

A. In our profession every process of manufacturing,
168 no matter what it may be, each one tries to hide; I am not an exception to the rule.

Q. 50. In the case of that formula you do like all your competitors?

A. I do as my competitors, I do as they do for their individual products; they do not give away to every one their systems, they keep them for themselves; I intend to do likewise. They do not divulge their processes, I intend to do the same.

Q. 51. You cannot, therefore, reply to this question: Who is it supplies the necessary plants for the making

of the liqueur which you sell at the present time on behalf of the Liquidator ?

A. No, sir.

Q. 52. Do these plants come from the group of the Grande Chartreuse ?

A. How do you put the question, if you please ? All ?

Q. 53. Have you plants which come from the group of the Grande Chartreuse ?

A. Yes, Sir.

Q. 54. From what part of the group of the Grande Chartreuse ?

A. From the whole of the Grande Chartreuse group ; there are some which come from the whole of the group of the Grande Chartreuse, from the gardens of the Fourvoirie factory and from the convent and from the Correrie, but I will not give the enumeration of each.

Q. 55. Have you experienced that these plants were indispensable ?

A. Yes, Sir.

Q. 56. Have you experienced that it is indispensable that these plants should come from the places you have indicated in the group of the Grande Chartreuse ?

A. Yes, Sir.

Q. 57. During what length of time has it taken you to get the experience which permits you to have this opinion ?

A. For three months. Three months during the last occasion, but for forty years previously. Let us say from 1860 to the present time ; it is not exaggerated, but finally for about three months. I say about three months.

Q. 58. For forty years you have therefore been able to procure these plants ?

A. Analogously, at the druggists.

Q. 59. How do you know that those druggists kept the plants from this part of the group.

A. Because they told us so.

Q. 60. Who are these druggists ?

173

A. Oh! Petit & Bollet, of Besançon, and others at Lyons, of whom I do not remember the name.

Q. 61. Petit & Bollet, you say, of Besançon?

A. Yes, pharmaciens—druggists, drugs.

Q. 62. So they were able to procure them?

A. I buy them as such.

Q. 63. You only have, as a proof of their origin, the declaration of the seller?

A. Evidently. When one has not gathered them
174 oneself.

Q. 64. Do you know whether the whole of the group of the Grande Chartreuse belongs to the State?

A. I am not posted on the question. I do not know.

Q. 65. When you manufactured the yellow liqueur formerly, before coming to terms with the Liquidator, did you use plants which came from the group of the Grande Chartreuse, of which you spoke just now?

A. Certainly, yes, but not all. You have to be care-
175 ful of the traps that are put out for you; not all.

Q. 66. Have you cancelled the contract with the Liquidator?

A. Yes, Sir.

Q. 67. Can you produce the act of cancelling?

A. No, Sir.

Q. 68. You refuse to produce it?

A. Mr. Lecouturier will produce it for you if he deems proper.

Q. 69. You do not see any inconvenience to Mr.
176 Lecouturier producing it?

A. That does not concern me; I have nothing to do with it, it does not concern me any longer.

Q. 70. Then you refuse to produce it?

A. No, Sir. It does not concern me. That does not concern me.

Q. 71. Your answer is equal to a refusal?

A. No, Sir. That does not concern me. I have not the right to dispose of that which no longer belongs to me.

177

Q. 72. What were the circumstances that led you to cancel your contract?

By Mr. Kelly: I object to the question as having no relation to the case.

By Mr. Bonnet: I will show you presently a very close relation.

By Mr. Kelly: It is my duty to record my objection.

178

Q. 72. What were the circumstances that led you to cancel your contract?

A. Disagreements in the advertising, in the inspection, in the general management, which only concern Mr. Lecouturier and myself.

Q. 73. You were reproached with bad advertising, you say; will you give details?

A. If you have the contract you have the whole of it. They reproached me. I no longer remember, any more than I remember what I reproached, for the day 179 the matter is terminated as far as I am concerned. I no longer remember exactly.

Q. 74. I am going to refresh your memory. Were not these reproaches in connection with the manufacturing?

A. No, Sir.

Q. 75. The bad quality of the liqueur?

A. No, Sir.

Q. 76. Do you consent to put into the hands of the Commissioner the documents of the proceedings in 180 these different cases?

A. They no longer belong to me, as I have cancelled; they belong to Mr. Lecouturier, it concerns him.

Q. 77. You refuse to produce the correspondence exchanged with Mr. Lecouturier, and which was the cause of these proceediegs?

A. Of course, evidently, yes. I refuse.

Q. 78. In a letter which you addressed to Mr.

181

Lecouturier did you not claim from him the secret of the manufactory?

A. No, Sir. I have no remembrance of it.

Q. 79. Do you affirm that you did not claim the secret of manufactory in one of the letters written to Mr. Lecouturier?

A. Affirm that I claimed a secret of manufactory? No Sir, I have never claimed that, no.

Q. 80. Can you produce the correspondence ex-
182 changed between Mr. Lecouturier and yourself?

A. That concerns nobody but him and myself. No, I will not produce it. Mr. Lecouturier will produce it if he wishes.

Q. 81. Have the proceedings entered into between you and Mr. Lecouturier been judged?

A. No, Sir.

Q. 82. Was there a compromise entered into?

A. I would not like to make a mistake in perhaps answering awkwardly. Is it compromise or an assign-
183 ment?

Q. 83. Have you put an end to the proceedings by a contract?

A. Yes, Sir.

Q. 84. Have you renounced, by this mutual agreement, the rights which were conferred to you by the first contract?

A. I do not remember.

Q. 85. According to the first contract were you not to manufacture for Mr. Lecouturier up to the time of
184 the adjudication?

A. That was not foreseen; I was to manufacture so long as I was in the affair.

Q. 86. Were you not supposed to come forward as purchaser for a given sum?

A. I do not know why these questions are put; I will not reply to them.

Q. 87. Were you not supposed to come forward as purchaser for a given sum?

A. I do not reply to that question.

Q. 88. Does not the compromise entered into make

185

provision in the case of another grantee? Will you answer me?

A. I do not remember.

Q. 89. Did not Mr. Lecouturier bind himself, in this agreement, to have your stock bought up by the person with whom he would ultimately come to terms?

A. I do not remember that either exactly.

Q. 90. You therefore refuse to produce the contracts entered into with Mr. Lecouturier, the assignment and 186
the results arrived at in the cause which pended between you, as well as the correspondence?

A. Yes, Sir. In the first place there has been no suit. We have not yet had any suit.

Q. 91. There have not been any law-suits between you and Mr. Lecouturier before the Court of Grenoble?

A. No, Sir.

Q. 92. There have been no writs issued?

A. That is another thing. It has not been heard, 187
unless there be trials by presumption, judgments by presumption.

Q. 93. You have received a summons from Mr. Lecouturier?

A. Yes, Sir.

Q. 94. To appear before the Court of Grenoble?

A. Yes, Sir.

Q. 95. At the time of the hearing of the case a compromise was entered into?

A. Some time after. 188

Q. 96. Some time after what?

A. After the time of the hearing?

Q. 97. After the time of the hearing?

A. Yes.

Q. 98. You mean to say before the time of the hearing?

A. No, it has not been heard.

Q. 99. Well, at the period when it should have been heard or after. Is it before or after the hearing?

189

A. The case has not been heard, so it cannot be before or after. It is after the period when the case was called.

Q. 100. Once again you refuse to produce all the documents relating to these proceedings, which have not been heard or tried?

By Mr. Kelly: How many times are you going to ask that question?

190 By Mr. Bonnet: It is of interest: I alone can judge.

A. I also, I can judge, and I reply No.

Q. 101. Was there not a summons sent by Mr. Lecouturier to you or by you to Mr. Lecouturier before the Tribunal of Commerce of the Department of the Seine, to appear before the Tribunal of Commerce of the Department of the Seine?

A. I have no knowledge of it.

191

By Mr. Bonnet: I have but one question to put to the witness regarding the identification of the bottles. I have had collected by a bailiff —and if the mode of procedure does not suit you I am ready to adopt any other—samples of the liqueur sold at the present time by Mr. Cusenier. It concerns * * *

By the Witness: No, Sir, by the Liquidator. Let us make a distinction.

192 By Mr. Bonnet: * * * by the Liquidator. It is necessary to identify the bottles and the labels: do you prefer that it be done by Mr. Cusenier or by Mr. Lecouturier?

By Mr. Kelly: I think there is a distinction to be made here. One of these gentlemen could identify the bottle but neither one nor the other could identify the contents.

Mr. Bonnet: There is no question of contents, not at all.

193

By Mr. Kelly: It is quite indifferent to us whom you choose.

By Mr. Bonnet: Here is a certificate made by a sworn officer; here is the box which is sealed.

By Mr. Kelly: Are you going to put in this document?

By Mr. Bonnet: I will attach this document in the event of you accepting, if not we will proceed together.

By Mr. Kelly: I cannot accept this docu- 194
ment: it is not admissible according to our jurisprudence.

By Mr. Bonnet: How do you want us to act in order to identify a bottle.

By Mr. Kelly: A bottle is produced to the witness: the witness declares that it is a bottle which one day or the other contained his liqueur, but he cannot identify the liqueur.

By Mr. Bonnet: I take the liberty of mak- 195
ing an observation. If you ask of the witness —I see no objection in doing so—if the bottle has or has not contained his liqueur you put a question concerning the liqueur when it has been understood that we reserve that.

By Mr. Kelly: This is the system with us: it is to produce the bottle to the witness and to ask him: "Is this really the bottle which you used"?

By Mr. Bonnet: Quite so.

The Commissioner breaks the seals, opens the 196
box and withdraws four bottles therefrom.

Q. 102. I am going to put this question: These bottles empty and these labels are they really those which you utilize in your business on behalf of the Liquidator, both for France and abroad?

A. Yes.

The four bottles identified by the witness are given to the Commissioner to form part of

197

the present testimony, and they are marked as follows:

"Exhibit No. D" Half-litre (small bottle) yellow,

"Exhibit No. E" Litre (large bottle) yellow,

"Exhibit No. F" Half-litre (small bottle) green,

"Exhibit No. G" Litre (large bottle) green.

198 Q. 103. Have you shipped bottles identical to these, with the labels, to the United States?

A. Yes, sir.

Q. 104. To whom have you shipped them?

A. To Mr. Aubry.

Q. 105. About how many of them have you shipped?

A. I no longer know. There have been two, three or four shipments. I no longer know.

Q. 106. What is the firm of Cusenier & Cie of New
199 York?

A. It is a branch of the Cusenier society here, like the Cusenier society of Buenos-Aires.

Q. 107. I would like to put one last question. You told us a while ago that you found your formula thanks to the collaboration of your staff and of scholars. Was it therefore by analysis that you were able to reconstitute the true formula?

A. By every kind of means.

200 By Mr. Kelly: I object; you say "the true formula": it has not been yet proven that there is a true formula.

By Mr. Bonnet: The formula of the Carthusian Fathers.

By Mr. Kelly: I ask of the witness if he wishes to change his reply in view of the change produced in the question.

By the Witness: Which of the formulæ of the Carthusian Fathers. I reply to the question by asking "Which"? They have had several; they have had a heap of them.

201

Q. 108. Firstly, the formula which they used formerly?

By Mr. Kelly: Formerly to what?

By Mr. Bonnet: To the expulsion. (To the witness): Will you answer me?

A. The formula which they used formerly? They have used several.

Q. 109. I put you a question, answer me by yes or by no, or by not at all. 202

A. I beg your pardon * * *

By Mr. Bonnet: I put this question to you and I state it precisely: The formula which you use and which is due, you say, to the collaboration of your staff and scholars—

By the Witness: And by all other means.

By Mr. Bonnet: Will you excuse me, I am putting the question. It is necessary that my interrogatory be free— 203

By the Witness: It is necessary that my answers be also! (Mr. Bonnet requests the stenographer to read the passage of the preceding interrogatory).

By Mr. Bonnet: You see, Mr. Commissioner, what comes of interlining an observation of the witness in a question.

By Mr. Kelly: The duty of the stenographer is to take down all that is said by you as well as by the witness. 204

By Mr. Bonnet: It is my duty to point out to the Commissioner that I cannot put a question without being interrupted by the witness. I beg that the Commissioner will ask the witness only to reply when I have finished my question.

Q. 110. The formula which you use, and which is due, you say, to the collaboration of your staff and of scholars, does it enable you to obtain a liqueur identi-

205 cal to that which the Carthusian Fathers manufactured before the expulsion ?

A. It is not for me to be the judge. One cannot be judge and witness in France. It is for the public itself to be the judge, and science, if you like.

CROSS-EXAMINATION BY MR. KELLY :

x-Q. 1. You answered very well to the last question
206 which was put to you, Mr. Cusenier, but that does not prevent me also wishing to ask you if, according to your opinion, you have been enabled to manufacture a liqueur nearly identical to the liqueur made by the Carthusian Fathers before their expulsion ?

A. I entered into a contract with the Liquidator to do so and I have the conviction of having fulfilled this contract.

x-Q. 2. And if the liqueur which you make is not absolutely identical to the liqueur formerly made by
207 the Carthusian Fathers, what is the difference ?

A. The difference of age, as the Carthusians themselves had the difference between their 1900 liqueur and those of 1867 and 1869 that were sold on the foreign markets.

x-Q. 3. Beyond this difference, which is above all a difference of delicacy, you do not see any other difference ?

A. No, Sir, no appreciable difference.

x-Q. 4. And what have you to say about the liqueur
208 that the Carthusian Fathers are making at the present time ? Is it identical to that which they manufactured at the Grande Chartreuse before the expulsion ?

A. It is very delicate for me to reply to that. Public opinion has already said from all over : No.

x-Q. 5. And what is the reason for the difference ?

A. Perhaps for the same reasons as I have just indicated, and the plants above all, on account of the plants which cannot be worked.

x-Q. 6. That is to say it is a question of age and plants ?

209

A. And of the plants.

x-Q. 7. Is it a notable difference?

A. Perceptible—Here there are the means of manufactory, processes that I do not care to divulge. I stop there. There is a knack.

x-Q. 8. Do you believe that there exists a secret of the Carthusians?

A. A secret?—Like the secret for making omelet—like the secret to make what? No.

x-Q. 9. You say that each distiller has his own 210
process?

A. His own processes.

x-Q. 10. Which he does not divulge?

A. Which he does not divulge.

x-Q. 11. Do you believe that the Carthusians also have some?

A. They evidently have a process, that is certain, and I esteem that their process and ours must be exactly the same, as processes go.

x-Q. 12. Do you believe that they have a secret 211
formula?

A. If the secret is an immutable thing, no.

x-Q. 13. Why would it be impossible to have an immutable formula?

A. By the nature of the primary ingredients which make up the composition, in the making of the liqueur.

x-Q. 14. That is to say the primary ingredients differ from year to year?

A. Yes, sir, from year to year. 212

By Mr. Bonnet: That is a leading question.

x-Q. 15. I will put my interrogatory in the following way: will you tell me if, according to you, the primary ingredients differ year by year?

A. Yes, sir.

x-Q. 16. Will you tell me in what way this difference of the primary ingredients may affect the results and the formula?

213

A. You make me enter into a course on botany, of therapeutics, which is not easy. Certain years, for instance, it rains a great deal; there are watery plants that this suits very well; it brings out their odour and they yield more. For others it has a diminishing effect, and if you put the same weight, and the same quantity of the one and the other, according to the fixed formula, you will fatally have a liqueur which will be disassociated, as we call it. That is the word, (turning to
214 M. Rocques), is it not, Mr. Chemist? Therefore there would not be any harmony in the making of a liqueur like that, which necessitates at each vatfull one may say, a tasting as finish, a very careful tasting, just like the preliminary study of each of the plants separately, so as to know exactly the composition in useful principles, in odour and aroma.

x-Q. 17. And how can this variation in the plants affect the formula?

A. For the reason which I have just indicated to you.
215 There are plants which have more odour if it has rained during the year, and others which have less. If you always put the same quantity it would be upsetting everything. It is like an orchestra, music when the instruments are not always in tune, far from it. The tuning fork, it is the manufacturer.

x-Q. 18. The distillers of France, can they or can they not make a liqueur called Chartreuse?

A. " Called Chartreuse "?—They all make a so called Chartreuse, but—

216 x-Q. 19. They each have their formula?

A. They each have their process, but they cannot sell it even under the name of " called Chartreuse "; they put " Yellow liqueur," " Taragone," all kinds of names.

x-Q. 20. And you have made a yellow liqueur which was, according to you, the same liqueur—nearly the same liqueur as the Chartreuse?

A. Yes, Sir, but not like this one.

x-Q. 21. Not like the one which you make at the present time?

217

A. No, no.

x-Q. 22. In what way was it different ?

A. It was different in some of the very operations in the making, which, I may say, must be effected at the place where the plants come from. I do not wish to go any further.

x-Q. 23. I do not wish to ask you the secrets of the making but I would like to know—

218 By the Witness: There is no secret, you do not risk anything by asking me—

By Mr. Kelly: If you could tell me why it is sometimes advantageous to manufacture on the spot where the plants grow ?

A. It is necessary for me to reflect in order to reply. The plants can be used in two ways, fresh or dried, as soon as they are gathered even, and others after they are dried.

219 x-Q. 24. If the plants which it is necessary to use in a fresh state had to travel, what effect might this travelling have on the result ?

A. A fermentation would follow, which would have the result of transforming the natural perfume of the fresh plant.

x-Q. 25. Would this fermentation be detrimental or advantageous for the manufacturing ?

A. It would be, in my opinion, detrimental. I do not say noxious.

220 x-Q. 26. You have stated that, before manufacturing on behalf of the Liquidator, you made a yellow liqueur and that you tried to have plants coming from the Grande Chartreuse. Did you experience any difficulties or deceptions ?

A. Some were sold to me by druggists as coming from the group of the Grande Chartreuse ; I did not go to verify it.

x-Q. 27. Can you tell me if the yellow liqueur which you made is equal, from this point of view, to the liqueur

221

that you make at the present time on behalf of the Liquidator?

A. No, Sir, it was not equal to it.

x-Q. 28. You refused to reply when you were asked from whom you get the plants at the present time. Without wishing to be indiscreet, I ask you if you do not cultivate plants yourself?

A. Yes, Sir.

x-Q. 29. At the Grande Chartreuse?

222 A. Yes, Sir, we even pay a rent for that.

x-Q. 30. You pay a rent to the State?

A. We have paid a rent.

x-Q. 31. To the State?

A. So many questions are put that I could not foresee.--Yes, we have paid a rent, we have the sole right to cultivate and the sole right to gather on the estate of the Grande Chartreuse.

x-Q. 32. Does this right permit you to stock a large quantity of plants of the Grande Chartreuse?

223 A. Yes, Sir.

x-Q. 33. You are the only person who has this right?

A. Yes, Sir, according to the contract.

x-Q. 34. I am going to ask you to state a little more precisely, if you wish, the controversy that you have had with Mr. Lecouturier. Cannot you remember, by trying, what were the grievances of Mr. Lecouturier?

A. The grievances of Mr. Lecouterier were: bad business organization —you can ask Mr. Lecouterier—

224 lack of advertising, and then I think about the agents.

x-Q. 35. Are you sure it was not a question of quality?

A. No, Sir.

x-Q. 36. Are you sure that it was not a question of quality?

A. No, Sir.

x-Q. 37. Your reply is a little ambiguous.

A. It has never been a question of the quality of the liqueur between Mr. Lecouturier and myself, that

225

I know of at least ; such has never been notified to me by judicial or extrajudicial act, nor by any other manner.

x-Q. 38. And the compromise which has taken place between you, of what does it consist ?

A. It was to put an end to the grievances which existed between Mr. Lecouturier and myself.

x-Q. 39. To the rights of both ?

A. To the rights of both.

x-Q. 40. And the obligations of both ? 226

A. That is a compromise.

x-Q. 41. Are you manufacturing at the present time on behalf of Mr. Lecouturier ?

A. Yes, Sir, I continue.

x-Q. 42. You have not been very affirmative on the question of knowing whether the contract between you and Mr. Lecouturier spoke of a secret. Cannot you be a little more affirmative by thinking it over a little ?

A. It has never been a question of that between Mr. Lecouturier and I. 227

x-Q. 43. Never ?

A. Never.

x-Q. 44. You have stated that in the event of you not manufacturing on behalf of the Liquidator you could no longer manufacture the same liqueur ?

A. I said—Yes, Sir.

x-Q. 45. Of what would the difference consist ?

A. Because I would not longer be situated at the spot to make it as it is made at the present time ; that is the only difference. 228

x-Q. 46. Where does the advantage come in of being on the spot ?

By the Witness : To be on the spot— ?

By Mr. Kelly : At the Grande Chartreuse ?

A. I have explained : the picking of the plants and their use.

229

RE-DIRECT EXAMINATION BY MR. BONNET :

Re-d. Q. 1. You have said just now that you cultivate plants on the estate of the Grande Chartreuse ?

A. Yes, Sir.

Re-d. Q. 2. Will the indicate the spot ?

A. Fourvoirie, the Correrie and the Convent.

Re-d. Q. 3. You have said that Mr. Lecouturier reproached you with bad advertising, with bad adminis-
230 tration ?

A. Organization or business administration.

Re-d. Q. 4. A bad organization : the liqueur would not sell, then ?

A. Not at all, not that.

BY MR. KELLY : The reply is again ambiguous.

BY THE WITNESS : No it was not for that.

231 Re-d. Q. 5. What was the reason then of such a grievance ?

A. Ask Mr. Lecouturier.

Re-d. Q. 6. You will not answer then ?

A. No, Sir, because I do not know.

Re-d. Q. 7. In the first part of the deposition, when I was questioning you, you said that according to the terms of the contract with Mr. Lecouturier you were not obliged to any longer use the formula which you are at present using ?

232 A. Yes, Sir, that is not spoken of.

Re-d. Q. 8. And that you could continue to make the same liqueur but that you would not do so ?

A. Yes.

BY MR. KELLY : You said : "I would not be be able."

BY MR. BONNET : Not at all, he did not say that. That is leading !

BY MR. KELLY : He said it.

BY MR. BONNET : No !

233

By the Commissioner: What was your reply?

By the Witness: It is clear that I can still make all liqueurs; I would be able to make a similar liqueur, of course, but I would not do it; that is a thing which alone depends on me, but to make the same liqueur?—If you had put the question to me clearly I would have said "no, because I am not at Fourvoirie."

By Mr. Bonnet: I hold that it be recorded that the reply of the witness was provoked by a 234
word from Mr. Kelly.

By Mr. Kelly: Then I ask the witness to say whether he uttered the words which I attributed to him?

By the Witness: Yes, I uttered them.

By Mr. Kelly: I wish to explain that I heard the witness say: "I would not be able", and I request the stenographer to take down these words.

235

Session of Saturday, February 3rd, 1906, at 2 P. M.

Present: Parties same as before.

Jean Claude Francois Henri Riviere, of London, England, temporarily sojourning in Paris, France, wine merchant, aged fifty-three years and upwards, having 236
been produced, sworn and examined on behalf of the Plaintiff, doth depose and say as follows:

Direct Interrogatories by Mr. J. Bonnet, representing the Plaintiff:

Q. 1. Will you give me your name and christian names?

A. Jean Claude François Henri Riviere.

Q. 2. What is your profession?

A. Wine, spirit and liqueur merchant.

237

Q. 3. Your residence?

A. London.

Q. 4. Your address?

A. 50, Mark Lane.

Q. 5. What is your age?

A. Fifty-three and a half years.

Q. 6. Do you sell Chartreuse?

A. Yes.

Q. 7. What Chartreuse do you sell?

238 A. That made by the monks at Tarragona.

Q. 8. Do you sell no other?

A. No.

Q. 9. Have you sold no other?

A. Lots.

Q. 10. I ask you have you sold no other?

A. I have sold the Chartreuse which the monks formerly made at the monastery of the Grande Chartreuse?

Q. 11. Since when have you sold the Chartreuse
239 made by the monks at the monastery of the Grande Chartreuse?

A. Since July, 1901.

By Mr. Kelly: Since when?

By the Witness: Since July, 1901.

Q. 12. Since when have you sold the liqueur made by the Carthusian Fathers at Terrogona?

A. September—wait—September. In Autumn, I
240 cannot state the month exactly, but it was in the Autumn of 1904 that we began to sell it. But I cannot tell you whether it was in the beginning of September or of October, I do not know.

Q. 13. In what countries do you sell these products?

A. In England in the first place, in Scotland, in Ireland and in Wales, and South Africa—principally, because we have export orders which are forwarded to other countries, but I am the agent for these countries.

Q. 14. Has the liqueur made by the monks been counterfeited?

241

A. Often.

Q. 15. It is still counterfeited ?

A. It is.

Q. 16. Is it counterfeited as much as formerly ?

A. More than ever.

Q. 17. To what do you attribute this recurrence of counterfeiting ?

A. Because for the last five years no steps have been taken to stop or interfere with it.

242

BY MR. KELLY : I object to that question as asking the witness' opinion.

Q. 18. Can you inform me what forms the imitation takes ?

A. There is firstly the imitation of the label, not only of the label that the monks employed but also the label which the liquidator employs ; there is also the bottle which is the exact reproduction of the old bottle used by the monks when they made their 243 liqueur at the monastry, with the emery marks—I suppose it is that, is it not ? The marks which are on the bottles : the stars, the orb, the cross, the marks inherent to the glass, then the little seal on the top of the cork, in fact all. It is a perfect imitation.

Q. 19. Could you give me examples of these imitations ?

A. Yes, I can mention two principally amongst others. Firstly, there is one which is connected with a case tried at London, the Benedictine against a 244 certain Mr. A. G. Green. In the course of this trial Mr. Green said that he had made Chartreuse in Wales, as well as other liqueurs with well-known names. He said in English : " Chartreuse as well as other liqueurs of well known names." That is Mr. Green's evidence. Therefore there had been an imitation. Then there is another example which is much more recent seeing that it is still before the Courts. It is that of Benoit-Boitel, which came up at Greenwich, which was before Mr. Baggelay, he is a judge, a magistrate—

245 only last week. A seizure had been made of different counterfeited articles found at his house and here is the list: "Inspector B. produced a list of articles "found on the prisoner's premises, and which included "the following:" Is it necessary to give all the details. There are Martells, then there are different things, and then we come to "155 bottles with the Chartreuse mark." It is not said here but I know it for a certainty that they discovered also a quantity of
246 Chartreuse labels, the Grande Chartreuse. those, as I told you, imitating the old label of the monks and the others imitating the label of the liquidator. I have here and can show you if you desire it two specimens of these labels.

Q. 20. At what time did the first trial of which you have spoken take place?

A. The first—That trial came on several times. It was remanded several times, it was finally judged by Justice Backlay in August, I suppose, or July. In
247 any case this newspaper is a paper of the 9th of August which gives an account of the trial, in August, the 1st, 2nd or 3rd of August.

Q. 21. In what year?

A. 1905.

Q. 22. Will you produce these documents and hand them to the Commissioner?

A. Here are the two documents which I produce showing the two cases.

248 By the Commissioner: Will you please sign them.

By Mr. Kelly: I object to the production of these documents as being irrelevant to the cause now in hearing.

Mr. Bonnet: You will object, but I deposit them.

The witness signs and deposits two cuttings from newspapers marked Exhibit K, and a copy of "Ridley's Wine & Spirit Circular" of August 9th, 1905, marked Exhibit L.

249

Q. 23. Do you know why these counterfeiters were not prosecuted ?

A. I suppose it was on account of the disorganized state in which one was. I do not know, I cannot say ; what I do know is that they were not prosecuted.

Q. 24. In whose name are the former marks of the Carthusian Fathers in England at the present time ?

By the Witness : At the present time ?
By Mr. Bonnet : Yes. 250

A. They are in the name of the Liquidator Lecouturier since the transfer by the Registrar.

Q. 25. Since what time ?

A. It was on the 2nd May, 1905, that the transfer was made.

Q. 26. Do you know following what action this transfer took place ?

A. The Liquidator, represented by a representative of some kind in England requested the transfer of these 251 marks.

(The Commissioner leaves the room.)

By Mr. Bonnet (to Mr. Kelly) : Shall we wait ?

By Mr. Kelly : When I am questioning, yes. As for me, when I cross-examine I always request that the session be suspended, but I do not exact that now.

By Mr. Bonnet (to the Witness) : You can 252 reply.

(The Witness :) It was by virtue of an order of the Court of Grenoble, dated February 15th, 1905, that Mr. Lecouturier, represented by some one that I do not know, applied to the Registrar to obtain the transfer of the said marks.

(The Commissioner returns to the room.)

Q. 27. What quantity of Chartreuse manufactured

253 by the monks, when they were in France, have you sold ?

A. Considerable quantities, thousands and thousands of cases.

Q. 28. Have you also sold Chartreuse manufactured by the monks at Tarragona ?

A. Yes.

Q. 29. Did you have any knowledge of a Liquidator being named to liquidate the property of the Carthu-
254 sians ?

A. Yes.

Q. 30. Do you know the name of this Liquidator ?

A. Henri Lecouturier. His name is familiar to me.

Q. 31. Do you know if he continued to manufacture ?

A. At the Grande Chartreuse ? Yes. Either he personally or by a representative, that I do not know.

Q. 32. Do you know his products ?

A. Yes.

Q. 33. Do you also know the marks of the Carthu-
255 sian Fathers ?

A. Perfectly well.

By Mr. Bonnet : Mr. Commissioner, I desire that the samples be brought out so that they may be shown to the witness. The two, are there not, those produced by Mr. Dubonnet and those produced by Mr. Cusenier.

(The samples are brought out by the Commissioner).

256

Q. 34. Will you look at these bottles and tell me if you recognize these bottles and these labels ?

A. Yes, I recognize them very well ; I recognize them.

Q. 35. What are these marks ?

A. They are the marks of the monks.

Q. 36. At what period did they use these marks ?

A. Before their expulsion from the monastry of the Grande Chartreuse.

257

By Mr. Bonnet: It is necessary, Mr. Commissioner, that you have them signed, in such a way that the authenticity of this exhibit has been recognized—that it may be recorded that they have been recognized by the witness.

By the Commissioner: Will you put your initials on these bottles?

(The witness writes his initials on the bottles).

Q. 37. Do you know the marks which the Liquidator 258
uses?

A. Yes.

Q. 38. Do you recognize these marks?

A. Yes, I recognize them—Yes, that is the mark of the Liquidator.

Q. 39. Are they identical to those which the monks formerly used?

A. They are with a single exception, that is the labels of the monks bore "Lith., Allier, Grenoble," those of the Liquidator bear "Imp. Litn., Grenoble." 259
But the characters of this imprint are so similar that unless you know beforehand, unless you are informed beforehand, at first sight it is impossible to distinguish the difference. In the first place it is so small, is it not? You must not be near-sighted, in any case, to find it. I do not know if you want to prove—

By the Commissioner: Yes, that is true.

The Witness: Consequently the public, not knowing that this difference exists, does not dis- 260
cover it.

Q. 40. Do you know the liqueur of the Liquidator?

A. Yes.

Q. 41. Have you tasted it?

A. Yes.

By Mr. Kelly: I raise an objection, the gentleman not having qualified as a taster, not yet.

261

Q. 42. Have you tasted it ?

A. I have tasted it, yes.

Q. 43. Have you often drunk it ?

A. I never drink liqueur. No, because it is on account of my health ; my doctor does not permit me drink or eat things containing sugar—that is very simple.

Q. 44. You have only tasted it ?

A. Only tasted it.

262 Q. 45. Is there or is there not a difference between the liqueur formerly made by the Carthusian Fathers, Chartreuse, and the liqueur made at the present time by the Carthusian Fathers at Tarragona ?

BY MR. KELLY : I object, the witness not having qualified as a taster.

A. There is none, except a question of age.

Q. 46. Is there or is there not a difference between
263 the liqueur made at Tarragona by the Carthusian Fathers at Tarragona and the liqueur made by the Liquidator ?

A. There is one.

Q. 47. On what do you rely in order to affirm that there is no difference between the liqueur made by the Carthusian Fathers at the Grande Chartreuse and the liqueur made by the Carthusian Fathers at Tarragona ?

A. On public opinion, on the appreciation of the
264 public, and on the fidelity of my customers.

Q. 48. Explain to me what you have in mind.

A. Well, it is this — My customers have remained absolutely true—simply because the public continued to ask for the liqueur made by the monks, and that is the best proof that the public has not noticed any difference between the liqueur made at Tarragona and the old liqueur made by the monks at the monastery of the Grande Chartreuse before their expulsion.

265

Q. 49. You have not noticed any difference in the figures of your business?

A. The difference is so small that I may say it does not exist. I do as much business to-day as before all the events, and seeing the period of depression through which we have passed in England for three years, which has above all affected luxuries, it would have been natural that there should be a noticable reduction. Well, this has not happened, and the business I am doing, I tell you, is about the same thing as 266 it was before.

Q. 50. On what do you rely to state that a difference exists between the liqueur made by the Liquidator and the liqueur made by the monks at Tarragona?

A. It is that the public must have noticed this difference and that it calls for, that it drinks but very little.

Q. 51. From what period did you notice that the Liquidator sold his chartreuse in England? Do not consult any documents. 267

A. I do not know. You understand it is quite possible that I was not aware of the first sales by the Liquidator.

Q. 52. I ask you from what period you noticed, you, that the liquidator was selling chartreuse in England. It is to your memory, to your personal experience that I appeal.

A. In Autumn last, at the beginning of Autumn.

(Mr. Kelly requests the stenographer to give the number of the present question. 268

By Mr. Bonnet: What did you say, Mr. Kelly?

By Mr. Kelly: I would like to have the number of the question because I will come back to that, but he is not numbering them at the present time.

Q. 53. Have you noticed a falling off in your business since the Liquidator sells his liqueur?

269

A. No, it is hardly perceptible. I have not got the figures, and it is difficult for me, without the figures, without my books, to be absolutely certain in answering you, but if there is a difference it is very very small.

Q. 54. Are there no other facts existing, to your knowledge, which prove that customers, or which do not prove that customers are addicted to the liqueur of the monks ?

270

By Mr. Kelly : I object to the question as leading.

By Mr. Bonnet : I will modify my question. Is the public addicted to the liqueur of the monks ?

A. Extremely so.

Q. 55. Do you know of any facts which establish this ?

271 A. Well—there is a fact resulting from the action itself of the agent of the Liquidator in England, who had spread the rumour that the Liquidator had found a considerable quantity, several hundred dozens of bottles of chartreuse already made at the Monastery at the time when he took possession. And for a long time I knew that this fact was not correct and it was impossible for me to deny it without any document. It was then that I requested to be sent to me a copy of the inventory which had been made at the time of tak-
272 ing over the property of the Carthusian Fathers. And I wrote a letter to the special newspapers, to three of our trade papers, which are " Ridley's Wine & Spirit Trade Circular " the " Wine Trade Review," and the " Wine and Spirit Gazette." I wrote a letter to these three papers, with a request that it be inserted, in which I protested against this assertion and where I again brought forward the facts. I quoted among other things the inventory in question which had been made and which showed that all that the Liquidator

273

had found at the Grande Chartreuse as far as liqueur is concerned was twenty-five litres of Grande Chartreuse, and 16,300 or 16,400 litres—I have not the exact figures—of pure alcohol, and seeing that the 25 litres of chartreuse had been valued at 4 francs per litre, and the alcohol at 75 centimes the litre, it is evident that this alcohol could not have been chartreuse, and consequently there had been found at the monastry but 25 litres in question; therefore the assertion stated was quite false and of a nature to lead people in error. 274 Moreover, I know that the agent of the Liquidator made offers of this imaginary stock and that he took orders which, of course, they were never able to execute. Moreover, what I wish to point out is that this letter of protestation, which appeared in the three papers, has never brought forth a reply of any kind nor a rectification on the part of the agent of the Liquidator, for the simple reason that I only quoted facts which he could not deny. Here is my letter, I will leave it, it is fit for an exhibit; and here is the 275 French translation.

By Mr. Kelly: I ask that the answer be struck out, because it does not reply to the question and because it is irrelevant to the cause now in hearing.

By Mr. Bonnet: The reply has a direct connection with the question at issue.

By Mr. Kelly: That is for our attorneys over there; we have not to plead here. 276

By Mr. Bonnet: All right, but I want to make the remark.

The Witness: Is it necessary to sign, Mr. Commissioner.

By the Commissioner: Yes.

The Witness: Is it necessary that I leave the three papers or only one. The letter is identical in the three papers of which I have given the names. I will leave "Ridley's Wine

277 & Spirit Trade Circular," of February 8th, 1905. The French translation is not necessary, is it ?

BY THE COMMISSIONER : As you have made it.

THE WITNESS : Now I can show you the two other papers which contain this letter ; here they are.

BY THE COMMISSIONER : What is the date ? The 8th of February, 1905 ?

THE WITNESS : In this paper here the letter
278 appeared on the 4th of February, in the " Wine & Spirit Gazette," and in the " Wine Trade Review " on the 15th of February. I will take away these two last papers.

(The witness hands to the Commissioner to be attached to the Commission a copy of " Ridley's Wine & Spirit Trade Circular," of February 8th, 1905, containing on page 120 the letter, and which is marked Exhibit M.)

279 Q. 56. To what do you attribute this favor by the public towards the Chartreuse ?

A. Because it has always been associated with the monks as the makers.

BY MR. KELLY : I object to the question as calling for an opinion from the witness.

Q. 57. Have you noticed or have you not noticed that the public liked Chartreuse ?

280 A. It liked it very much.

Q. 58. Have you been able to know and to recognize the motives of this ?

A. Because the public has naturally—

BY MR. KELLY : I ask that the gentleman answer the question.

THE WITNESS : I have replied, sir.

BY MR. BONNET : The gentleman commenced to answer, it is you who interrupted him before he had finished.

281

Q. 59. Why ?

By Mr. Kelly : I object.

A. Because the public associates Chartreuse with the makers, as I have just said because the public has a greater confidence in the products of the monks than in ordinary commercial products, for the very simple reason that the public is under the impression, and rightly so, that the monks are seekers, workers, and 282
moreover that there is in a monastic organization a continuity which does not exist and may not exist in an ordinary commercial firm, and still again because the monks are not susceptible, as ordinary merchants, to make for their personal benefit, personal to the individual himself, under certain circumstances, more considerable profits than a normal rate ; and under those conditions the public has naturally more confidence in the products of the monks than in the products of an ordinary commercial house. Moreover the public also 283
knows that most of the great discoveries relating to the distillery of brandies, for example, or also liqueurs, have been made by the monks, and it is for that reason, as I say, that—

Q. 60. In your business have you noticed any facts which establish this predilection of the public for the liqueurs manufactured by the monks ?

A. Why, yes, it is—It is the fact that the public continues to take the liqueurs manufactured by the monks more than those manufactured by the 284
Liquidator.

Q. 61. What liqueurs do you sell ?

A. The liqueur manufactured at Tarragona by the Carthusian Fathers.

Q. 62. Do you not sell any other liqueurs ?

A. No.

Q. 63. Do you not sell any other liqueur than Chartreuse ?

A. No, none.

By Mr. Bonnet : Thank you.

285

CROSS-INTERROGATORIES BY MR. EDMOND KELLY, representing the Defendants.

x-Q. 1. You are the sole agent of the Carthusian Fathers for Great Britain ?

A. Yes, and for South Africa, and for Ireland.

x-Q. 2. You have said that the agent of Mr. Lecouturier spread rumors on the London market ?

A. Yes.

286 x-Q. 3. How do you know that ?

A. Because it has been repeated to me by several people—

x-Q. 4. The rumors to which you make allusion in your letter ?

A. Certainly.

x-Q. 5. It is by hear-say, then ?

A. It is by hear-say ; that is to say if it is necessary that I produce affidavits from these people I can easily obtain them.

287 x-Q. 6. I do not ask you to produce affidavits, I ask you yes or no whether it is hear-say ?

A. It was customers of mine who declared to me that the agent of Mr. Lecouturier had declared that there was at the monastery, etc. what I have said in my letter and moreover these very people had had offers, and the same people had given orders for this so-called chartreuse found at the monastery at the time of taking possession.

x-Q. 7. That is what we call in England hear-say.

288 A. I do not agree with you, because hear-say in England is a gossip ; this is more a statement.

x-Q. 8. In the letter you wrote and had published in the papers to which you have alluded you do not say that these rumors were circulated by the agent of Mr. Lecouturier.

A. Because I did not wish to personally accuse this agent.

x-Q. 9. You took care not to expose yourself to a reply by him ?

A. I beg your pardon, yes, indeed, I say in my sec-

289

ond paragraph that it is from interested motive. Will you permit me to refer to it. You will see: I am pretty explicit.

x-Q. 10. How do you expect the agent of Mr. Lecouturier to reply to a letter which does not attack him?

By Mr. Bonnet: I make an objection to the form of your interrogatory, because of the way in which you put it. 290

By Mr. Kelly: For what reason?

By Mr. Bonnet: For it is a real dialogue in view of provoking a discussion rather than simple answers.

By Mr. Kelly: Why, of course.

A. Yes, it perfectly well attacks him, indirectly; it deals with facts which in London may be attributed as coming from him and I am ready to furnish affidavits from the persons who told this thing and which will 291 prove the good faith.

x-Q. 11. These affidavits are as little admitted in our jurisprudence as hear-say.

A. I do not know. There is a way in any case of ascertaining whether what I say is true or is not, and I am ready to abide by it.

By Mr. Kelly: It is for your lawyer to furnish the proofs.

By Mr. Bonnet: I again object to the 292 manner in which the interrogatory is being put.

x-Q. 12. You have stated, I think, that there were many imitations of chartreuse?

A. Yes, many.

x-Q. 13. Many?

A. At least, many—They have not all come to my knowledge, you understand.

x-Q. 14. Then how do you know them?

A. Because I can cite one or two others in addition;

293

if you will permit me to make enquiries in London I shall be able to cite others. I have cited two special cases.

x-Q. 15. You know of but two ?

A. I know of a third very well, but I do not remember the name.

By Mr. Kelly : That is regretable.

The Witness : I can produce them.

294

x-Q. 16. You know of but three cases ?

A. To my knowledge.

x-Q. 17. But three cases in England ?

A. There are many others.

x-Q. 18. You do not know them ?

A. I would not be able to give them in detail, but I can tell you that at the present time—I want to add this—there is a house in London, one of the largest houses in London which has had an offer from France
295 of 500 to 600 cases of old Chartreuse, said to have been made before the departure of the monks, and which is offered to this house. Well, as it is almost impossible, I may say impossible, that such a lot exists of old Chartreuse made by the monks before their expulsion from France I conclude that this big lot must be an imitation and I have moreover warned my customer of it.

Br Mr. Kelly : I demand that all that part
296 of the answer after the words : " I would not be able to give them in detail," be stricken out as not replying to my question.

I want the witness to know that it is his duty to answer my questions and that he has not the right beyond that to tell stories. He can spend all of our afternoon in telling stories, but I say that it shall not appear in the testimony.

By Mr. Bonnet : Make your objections, but I demand that the reply of the witness be taken down integrally.

297

THE WITNESS: You say to strike out a part of my reply.

BY MR. KELLY (to the stenographer): It is not necessary to take down this, this is a conversation.

BY MR. BONNET: I demand that all your conversation be taken down.

BY MR. KELLY: Then I say nothing.

BY MR. BONNET: I make objections because the form of your interrogatory is not usual, it is 298
a thrust at the witnesses. I demand that this be recorded.

BY THE COMMISSIONER: Take it down.

x-Q. 19. At least you can specify to-day but two cases, of which you have spoken: that is to say the case of Boitel and the case of Green?

A. Yes, but there is another man—I know of another.

x-Q. 20. I ask you can you specify any others than 299
these two cases?

A. No, not to-day.

x-Q. 21. Let us now study the kinds which you have cited: concerning the Green affair, you have produced the declaration of Mr. Green that he made Chartreuse in Wales?

A. Yes.

x-Q. 22. Is that all you have produced on this question?

A. It is a confession on the part of the accused. 300

x-Q. 23. A confession that he used the trade mark of the Grande Chartreuse?

A. That he made liqueur which he called Chartreuse and that he sold it with the Chartreuse label.

x-Q. 24. How do you know that he sold it with the Chartreuse label?

A. He says so.

BY MR. KELLY: Not at all.

THE WITNESS: Read. I have the document, and here are the words in English:

301

He made Chartreuse in Wales; he certainly made it to sell, what would he have made it for—

x-Q. 25. How do you know that he used the label of Mr. Lecouturier?

A. That speaks for itself.

x-Q. 26. Oh! it is a conclusion you draw from the words you have quoted?

A. I beg your pardon. In the first place I do not say it is the label of Mr. Lecouturier; he might just as
302 well have used the old label with the name "Lith. Allier, Grenoble."

x-Q. 27. You do not know which of these two labels?

A. No.

x-Q. 28. You have not seen?

A. No.

x-Q. 29. You know nothing?

A. There are three reports, it is the last case. If you read the beginning of the debates you will probably better understand the nature of this trial. It has
303 completely changed, it is he who has prosecuted later—

x-Q. 30. I cannot read a whole volume here. I asked you if there were other passages which you used as a basis in saying that Green used labels of the Grande Chartreuse?

A. From this report, from the report that that sitting particularly; there are no others.

x-Q. 31. Let us go on to the Boitel affair. Have you any other knowledge of this matter than what you ob-
304 tained from the document which you produced?

A. Yes.

x-Q. 32. What is this knowledge?

A. I had a conversation with the solicitor retained by Messrs. Hennessy & Martell to prosecute this individual—the solicitor entrusted with the prosecution, and he communicated to me the imitations of the labels which were—the specimens of the imitation labels which were discovered. Here are—

305

By Mr. Bonnet: Hand them in.

The Witness: I have to return them, it is difficult for me. If you like I will hand them in.

By Mr. Kelly: I do not ask to have them handed in.

By Mr. Bonnet: I ask it.

By Mr. Kelly: In your turn. I do not ask to have them handed in.

The Witness: A quantity of these labels 306
were found. There are some which bear: "Lith. Allier, Grenoble," here is one, and here is one imitating that of the liquidator.

x-Q. 33. And you say you received that from whom?

A. From the solicitor entrusted with the prosecution.

x-Q. 34. But you have not seen these labels on a bottle which you knew to have been sold by Mr. Green? 307

A. It does not concern Mr. Green, it concerns another matter. I was shown a bottle containing a green liquid bearing this label but I could not tell you whether it is the label "Allier" or not "Allier." But I have seen a sample, half a litre, containing a green liqueur, the label being a perfect reproduction of this one, absolutely impossible to distinguish one from the other; and these labels are made at The Hague.

x-Q. 35. What interest have you in introducing this document in this affair? 308

A. In reply to the request made to me to know whether there was or not imitation chartreuse, and whether his imitating had taken place since some time.

x-Q. 36. Do you see any connection between this imitation of the 31 January, 1906, and the affair in hand?

By Mr. Bonnet: I make an objection.

A. I content myself by giving the facts.

309

x-Q. 37. You do not see any connection?

A. I do not say that.

x-Q. 38. What is the connection?

A. I decline, I cannot say.

x-Q. 39. You decline?

A. I cannot say. I have simply replied to Mr. Bonnet's question: he asked me if there were any imitations, I said that there were, I give the proof of it. I have not to enter into any other details or give a
310 personal appreciation.

x-Q. 40. Of what liqueur were you speaking when you said that the public consumes but very little?

A. Of that of the Liquidator.

x-Q. 41. How do you know that?

A. By a very simple reason; there is not a single big restaurant in the West End of London, be it either the Savoy, the Carlton, the Café Royal, to my knowledge, which lists the liqueur of the Liquidator, or which has purchased it, and also, except for a single
311 customer of which I,—whom I have seen—, a firm, I mean to say a distributor, a retailer, I do not know of any price list on which the liqueur of Mr. Lecouturier is quoted.

(Mr. Kelly asks the stenographer to read this reply).

THE WITNESS: Will you permit me to make a rectification: no price list of a "distributer", seeing that in the City people like—the only
312 firm of distributers that I know—there is but one—

x-Q. 42. You have said, have you not, that there was between the chartreuse made by the Carthusian Fathers at the Grande Chartreuse and that made by the Charthusian Fathers at Tarragona only a difference which results from the question of age, was it not?

A. Yes.

x-Q. 43. Is this difference noticable?

A. Yes, slightly.

313

x-Q. 44. Slightly?

A. Slightly—that depends on the chartreuse to which you compare it. If it is a chartreuse of 10 years the difference is greater, and if it is a chartreuse of three years it is less notable: but only the difference of age exists.

RE-DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiff:

314 Re-d. Q. 1. You showed us just now some labels which had been handed to you by the solicitor who was instructed by a commercial house to look after their interests in the matter against the counterfeiter Boitel?

A. Of two houses, Hennessy and Martel, of Cognac.

Re-d. Q. 2. Can you hand these labels to the Commissioner.

BY MR. KELLY: Objection.

315 A. I thought I had handed them in—I do not know whether I have the right, they were communicated to me, you know. I will ask the permission of the solicitor to send them to you, and I will send them to you. I do not know whether I have the right to get rid of them—Here they are, I have no personal interest in keeping them.

Re-d. Q. 3. Will you hand them to the Commissioner?

A. I am going to hand them in. Sign them?

316

BY THE COMMISSIONER: Yes.

The witness signs the labels, which are attached to the Commission and marked Exhibit N.

MR. KELLY: My objection is because these labels have no connection with the proceedings and that they have not been sufficiently identified by the witnesses being the labels used by—Is it Green or Boitel?

BY MR. LECOUTURIER: Boitel.

BY MR. KELLY: Boitel.

317

SESSION OF SATURDAY, February 3rd, 1906, Continued.

Present : Parties as before.

VICTOR NICOLET, manufacturer, of Grenoble, France, temporarily sojourning in Paris, a witness of lawful age, having been produced, sworn and examined on the part of the Plaintiff, doth depose and say as follows :

318

DIRECT EXAMINATION BY MR. J. BONNET, representing the Plaintiff :

Q. 1. Will you give me your name ?

A. Nicolet.

Q. 2. Your christian names ?

A. Victor.

Q. 3. Your profession ?

A. Manufacturer.

319 Q. 4. Your age ?

A. Fifty-eight years.

Q. 5. Your residence ?

A. Grenoble,—Administrator of the Bank of France at Grenoble, since I am no longer a manufacturer.

Q. 6. Did you formerly sell the Chartreuse manufactured by the Carthusian Fathers ?

A. Yes, during nearly three years, two years and a half, three years. I was a member of the firm of Brezun & Company.

320 Q. 7. Are you still interested in that society ?

A. No, not since the month of May, 1904.

BY THE COMMISSIONER : 1904 ?

A. 1904.

Q. 8. Do you know the mountain slope of the Grande Chartreuse ?

A. Oh, yes, extremely well.

Q. 9. Have you been over it ?

321

A. I have walked over it in every direction ; I have property there, and I may say that since my childhood I know it better than any other place.

By Mr. Kelly : I wish to say here that I have not had notice that this gentleman was to be interrogated on the question of the slope of the Grande Chartreuse, otherwise I should have brought material for the cross-examination ; I may perhaps ask for an adjournment. 322

By Mr. Bonnet : You were not told in the letter ? If you like we will reserve this question and put it on Monday.

By Mr. Kelly : Perhaps I may be able to go on, but I do so under reserve. Perhaps I shall not need to put off the cro s-examination.

By Mr. Bonnet : I will continue, and if you think you cannot cross-examine to-day you will cross-examine on Monday.

323

Q. 10. Can you tell me what is the extent of the State domains in the group of the Grande Chartreuse compared with the whole of the group ?

A. The State has large properties in the group of the Chartreuse, especially in forests. In forests it must have nearly half the forests of the group, but the forests are hardly half of the total group. There are besides meadows, valleys, fields. Does the State possess a quarter of the group ? I do not know ; it seems to me it cannot be more. 324

By Mr. Kelly : I object, the witness not having been qualified as an expert.

Q. 11. Do the meadows belong to the State or to private persons ?

A. There are few meadows belonging to the State ; they belong more especially to the Hospices of Grenoble, to the different parishes of the group, and also

325 to private persons. I myself possess meadows in the group.

Q. 12. At what time did you cease to belong to the society Brezun & Cie.?

A. It was in May, 1904.

Q. 13. At what time did you begin to belong to it?

A. In July, 1901.

Q. 14. Whilst you belonged to that society were you aware of the imitations of which the marks of the
326 Carthusian Fathers were the object?

A. Oh, yes, a certain number of counterfeits, without speaking of the counterfeits that are daily made in the cafes by filling up the bottles. There are besides manufacturers who make a business of counterfeiting. It would be difficult for me to bear all the cases in my memory. We had a merchant in the East, a Madame Laurier, who had a pretty clever imitation. She sent off boxes of Chartreuse in which boxes were two or three bottles of real Chartreuse and the rest a
327 mixture of some sort. Now we have lately had the imitation discovered at St. Etienne and at Paris: this deceiver who had had bottles made exactly similar, of which he had put a considerable number on the market, and who pretended he had bought them from the society Brezun & Cie, and who even showed an invoice on which he had added zeros, in such a way as to magnify his figures. A sale, I believe, of a hundred bottles had become a sale of 100,000 bottles. I believe that he was prosecuted and condemned on that
328 charge. It was a man named Boitel.

By Mr. Kelly: I object to the answer, which has no connection with the question in hand.

Q. 15. What was the imitator called?

A. Mr. Boitel.

Q. 16. Did he put his Chartreuse on the market?

A. He had delivered some at Lyons and at St.

329

Etienne to my knowledge. Had he delivered some at Paris, or was he only preparing to deliver at Paris when he was taken? I do not remember.

By Mr. Kelly: I object to the answer, which has no connection with the question.

Q. 17. Do you know the labels and the bottles which the Carthusian Fathers used?

A. Yes. 330

Q. 18. Can you recognize them?

A. Here are the white, the green and the yellow. These are the old labels.

Q. 19. Do you know the labels which the Liquidator uses?

A. I have seen them, yes, sir.

Q. 20. Do you know these labels and these bottles?

A. That is it, the difference is found at the bottom.

By Mr. Bonnet: Will you have him sign, Mr. 331 Commissioner?

Q. 21. What difference is there between the labels of the Liquidator and the labels formerly employed by the Carthusian Fathers?

A. The difference is found in the imprint of the printer. The old ones bore "Lith. Allier, Grenoble," and the labels of the Liquidator bear "Imp. Lith. Grenoble."

332

By the Commissioner: Will you sign with your initials these bottles about which you have given evidence. You can do it on the label itself.

(The witness signs the bottles).

Q. 22. Why does the word "Allier" not appear on the label of the Liquidator?

A. Because it is no longer Mr. Allier who prints

333

these labels. I even know that Mr. Allier has refused to print them.

By Mr. Bonnet: Thank you.

Cross-examination by Mr. Kelly:

x-Q. 1. Are you a land surveyor?
A. No, sir.

334

Session of Saturday, February 10th, 1906, at 2 p. m.

Present:

Frank E. Mason, U. S. Consul-General, at Paris, France, Commissioner.

Mr. J. Bonnet, Counsel for the Plaintiff, assisted by Mr. Barbancey, Secretary, Mr. Legrad, private interpreter, and Mr. Bachrich, private stenographer;

335

Mr. E. Kelly, Counsel for the Defendants, assisted by Mr. Lecouturier, liquidator, Mr. Rocques and Mr. Dondey, experts, and a private stenographer;

G. Duclos, official sworn French stenographer.

Gabriel Villard, of No. 2, Rue Bayard, Grenoble, France, temporarily sojourning in Paris, France, chemist and druggist, aged forty years, having been duly

336 produced, sworn and examined on behalf of the Plaintiffs doth depose and say as follows:

Direct Interrogatories by Mr. Bonnet:

Q. 1. Will you give me your name?
A. Gabriel Villard.
Q. 2. Your profession?
A. Chemist, herbist.
Q. 3. Your age?
A. Forty years.

337

Q. 4. Your residence ?

A. No. 2, Rue Bayard.

Q. 5. In what city ?

A. Grenoble.

Q. 6. Have you been connected with the Carthusian Fathers ?

A. Yes, Sir.

Q. 7. Are you connected with them still ?

A. Yes, Sir.

Q. 8. Of what did your connections with them consist formerly ? 338

A. Business relations.

(Mr. Lecouturier enters the room).

By Mr. Bonnet : Mr. Lecouturier, shall I be able to hear you to-day as a witness ?

By Mr. Lecouturier : Yes, if you like.

By Mr. Bonnet : It is because I am going to ask you not to be present at these interrogatories, as I may be led to put questions to you which may 339 be a little of the same nature.

(Mr. Lecouturier retires, accompanied by Mr. Kelly. Mr. Kelly and Mr. Lecouturier return after a few moments).

By Mr. Kelly : I must on the contrary insist on the presence of Mr. Lecouturier at the hearing of all the witnesses.

By Mr. Bonnet : Under those conditions I ask then that my observation may be recorded on the minutes, and that I have asked that Mr. 340 Lecouturier should not be present at the examination and that Mr. Kelly holds to him being present. I continue the examination.

Q. 9. Of what did your connection with the Carthusian Fathers formerly consist ?

A. Business relations.

Q. 10. Of what do your present connections with the Carthusian Fathers consist ?

A. Business relations.

341

Q. 11. Will you specify what were and what are these business relations ?

A. It was—selling plants to the Carthusian Fathers.

Q. 12. Did you not sell anything else to the Carthusian Fathers ?

By Mr. Kelly : I object to the question as leading.

By Mr. Bonnet : I withdraw my question
342 under those conditions.

Q. 13. Did your predecessors have connections with the Carthusian Fathers ?

A. Yes, Sir.

Q. 14. What was the nature of these connections ?

A. Business relations.

Q. 15. Of what did these relations consist ?

A. The sale of plants to the Carthusian Fathers.

Q. 16. Since what period have your predecessors
343 sold plants to the Carthusian Fathers ?

A. My books, of my predecessors, which I have seen, permit me to affirm, that since 1861 they were already in relations with the Carthusian Fathers.

Q. 17. From where did these plants come which you supplied to the Carthusian Fathers before their expulsion ?

A. Some were exotic plants, others were cultivated plants coming from France, from all parts of France, others were wild plants, coming eepecially from the
344 group of the Grande Chartreuse.

Q. 18. Did the Carthusian Fathers cultivate plants themselves ?

A. Yes, sir.

Q. 19. How do you know that ?

A. I know it because they affirmed it to me.

Q. 20. Have you not had occasion to supply them with plants which they cultivated ?

A. Yes, sir, I have had occasion to supply them with the plants which they cultivated when their crop was insufficient.

345

Q. 21. Did the Carthusian Fathers use other plants than the exotic plants and the plants which they cultivated?

A. Yes, sir, they used wild plants.

Q. 22. Do you know whether the Carthusian Fathers when they were in France gathered themselves the wild plants?

A. Yes.

Q. 23. How do you know that?

346

A. I know it because they affirmed it to me.

Q. 24. Did you supply them with all the plants cultivated by the Carthusian Fathers when they had need of same?

A. Yes, sir.

Q. 25. Did you furnish them all the wild plants when they had need of same?

A. Yes, sir.

Q. 26. Did you furnish them with all the exotic plants of which they had need?

347

A. No, sir.

Q. 27. How do you know that?

A. I know it because I have seen, on my visits to Fourvoirie, packages, cases, coming from elsewhere than my firm.

Q. 28. From where did you get the wild plants?

A. I got them from the dealers, from the people who gathered them either in the group of the Grande Chartreuse, sometimes even elsewhere.

Q. 29. From where did you get the cultivated plants that you delivered to the Carthusians when they had need of same?

348

A. A little from all parts of France.

Q. 30. Do you know how the Carthusian Fathers procured the wild plants which you did not supply to them?

A. Yes, sir.

Q. 31. How did they procure them?

A. From the country people, who took them themselves their gatherings.

Q. 32. Where do the plants necessary for the manu-

349 facturing grow—the wild plants necessary for the manufacturing ?

A. They grow in the group of the Grande Chartreuse, and even elsewhere.

Q. 33. What do you understand by elsewhere ?

A. That is to say there are parts of France which by their exposure and their latitude produce the same plants as on the Grande Chartreuse, as on the group of the Grande Chartreuse.

350 Q. 34. Have you supplied the Carthusians with plants of these regions other than of the group of the Grande Chartreuse ?

A. Yes, Sir.

Q. 35. The exotic plants ; do you employ them green or dry ?

A. Always dry.

Q. 36. The cultivated plants, do you supply them green or dry ?

A. Dry, except one.

351 Q. 37. Which one ?

A. Orangettes.

Q. 38. Will you explain to us what is this plant ?

A. It is simply small oranges which have not yet arrived at maturity, which are still green.

Q. 39. Did you supply the wild plants green or dry ?

A. Always dry.

Q. 40. Do you know or do you not know if the wild plants gathered in the group of the Grande Chartreuse, when the Carthusians were in France, were de-
352 livered to them green by others than yourself ?

A. These plants were delivered to them indifferently green or dry. I may hasten to state that these plants were always dried at Fourvoirie.

Q. 41. How do you know that ?

A. I know it because I have myself seen the drying place, and I know it on the other hand because it was affirmed to me by the Carthusian Fathers.

Q. 42. Did you supply at times all the kinds of cultivated plants ?

A. Yes, Sir.

353

Q. 43. Do you supply at the present time the Carthusian Fathers with the plants which come from abroad?

A. No, Sir.

Q. 44. What do you supply to them?

A. I supply to the Carthusian Fathers cultivated plants and wild plants, but in much larger quantities than what I supplied of these same plants formerly, that is to say before their expulsion.

Q. 45. From where do you get the cultivated plants? 354

A. I get them from most of the dealers who supplied the same to them formerly.

Q. 46. From where do you get the wild plants?

A. From most of the dealers who supplied the same to them formerly.

Q. 47. Who were these dealers?

A. Dealers with whom I was put into relations by the Carthusian Fathers themselves before their departure for abroad?

Q. 48. Will you kindly indicate to us who were these 355 dealers?

A. These dealers were for the most part peasants from the villages—inhabiting the villages of the group of the Grande Chartreuse, and the most part of these dealers were themselves a sort of middle-men who centralized at their homes the plants which private people brought to them.

Q. 49. You have told us just now that when the plants cultivated by the Carthusian Fathers were lacking when they were in France, you furnished them 356 with what was necessary. Do you supply them still with these same plants?

A. Yes, Sir.

Q. 50. To where do you address the plants which you send to the Carthusian Fathers?

A. I address them to Tarragona.

Q. 51. How do you send them?

A. By railway.

Q. 52. What quantity do you send?

A. For 12,000 or 15,000 francs per year.

357

Q. 53. These plants which you send, are they the wild plants, are they the cultivated plants?

A. I send wild plants and cultivated plants.

Q. 54. What proof can you give to support your affirmations concerning the supply of the plants to the Carthusian Fathers since their expulsion?

A. I can produce, to support my affirmation, the way bills indicating that I have sent bundles of plants to Tarragona.

358 Q. 55. Will you kindly hand these documents to the Commissioner?

A. I can add to that a few way-bills indicating the place of origin—indicating the sending off of these plants of these commission agents, or of these gatherers of which I spoke just now: the shipments by these commission agents to myself, the first phase of the shipment.

Q. 56. Hand in all these documents—Have you in your hands at the present time all the way-bills—

359 invoice?

A. Oh, no, Sir.

Q. 57. Where are the others?

A. Every two or three years, as is done usually in business firms, we get our way-bills verified, and I have a very large number which are not even in my possession.

Q. 58. Where are they?

A. They are in the hands of an examiner. (The witness presents a bundle of way-bills).—I have not

360 looked for all the way-bills.

By the Commissioner: Will you sign one and put them together. I will put them together with the signed certificate at the beginning, as an exhibit.

The Witness: No matter which?

By the Commissioner: No matter, the most important—I will number them. Put the date at the bottom.

The Witness: And I sign?

361

By the Commissioner: Yes—that is right.

(The way-bills, ten in number, are annexed to the Commission marked Exhibit J.)

Q. 59. Do you supply plants to the Liquidator?

By Mr. Kelly: Will you permit me to see these documents that I may see if there is no objection to them.

By Mr. Bonnet: Do you supply— 362

By Mr. Kelly: One minute if you please, I have to see if I have any objection to make to these documents.

I make an objection to the documents produced as not being sufficiently identified.

Q. 60. You affirm that they are way-bills relating to the shipment of plants to Tarragona?

A. I affirm it.

Q. 61. Do you furnish plants to the Liquidator, or 363 to his representative, Mr. Cusenier?

A. No, sir.

Q. 62. Have you never been solicited?

A. I will tell you that I have been solicited.

Q. 63. By whom?

A. By a letter?

Q. 64. Coming from whom?

A. From the distiller of Fourvoirie.

Q. 65. What do you call him, this distiller?

A. Mr. Tièche. 364

By the Commissioner: How do you write this name?

The Witness: I have seen his signature once, I have heard it pronounced often.

By Mr. Kelly: Mr. T-i-è-c-h-e.

Q. 66. How were you solicited?

A. By a letter, which I must have in my possession, in which I was asked to kindly continue the business

365 relations which I had had with the Carthusian Fathers.

By Mr. Kelly: I make an objection.

By Mr. Bonnet: Of what nature?

By Mr. Kelly: Testimony cannot be given about the contents of a letter without producing the letter.

366 Q. 67. Will you please continue your testimony. What did this letter contain?

A. This letter contained this: that having been in business relations with the Reverend Carthusian Fathers it would be agreeable if I would kindly continue these same business relations and to send to Fourvoirie the list of plants that I supplied to the Reverend Carthusian Fathers, as well as their prices.

By Mr. Kelly: I make the same objection.

367 Q. 68. Do you offer to look for this letter and produce it?

A. I offer to search for it.

Q. 69. And if you find it, do you offer to produce it?

A. I affirm it.

By Mr. Bonnet: I thank you.

Cross-Interrogatories by Mr. Kelly:

368 x-Q. 1. You have said that you still furnish plants to the Carthusian Fathers?

A. Yes, sir.

x-Q. 2. And you have said, I think, that you supply to the Carthusian Fathers all the plants which they used?

A. All the plants which they used? I did not say that, sir.

By Mr. Kelly: (to the stenographer): Can you find the reply of the witness at this point?

369

(The stenographer reads the question and the following reply :)

Q. 42. Did you supply at times all the kinds of cultivated plants?

A. Yes, Sir.

x-Q. 3. I repeat to the witness the following question and reply: "Did you supply at times all kinds of cultivated plants?" A. "Yes, Sir."

A. I maintain the reply. 370

By Mr. Kelly (to the stenographer): Will you continue. We will find another question on the plants supplied to the Carthusians to-day at Tarragona.

(The stenographer reads from question 43 of the direct interrogatories to question 52.)

x-Q. 4. Then I understand that you were the only one supplying cultivated plants to the Carthusians at 371 the time when they were at the Chartreuse, and that you are not the only one to supply them with plants to-day?

A. There are two questions there, Sir.

x-Q. 5. I ask you if I have properly understood?

A. I am the only one to supply them the cultivated and wild plants.

x-Q. 6. And wild—from France?

A. From France.

x-Q. 7. The only one? 372

A. As far as it is possible for me to affirm that I am the only one.

x-Q. 8. You have spoken of necessary plants; you seemed to make a distinction between certain plants and plants necessary for the manufacturing. What do you mean by that?

A. I do not understand very well.

x-Q. 9. In your testimony a question was put to you about the plants necessary for the manufacturing.

373

You do not remember that—you do not remember that?

A. No, I do not quite grasp it.

x-Q. 10. You were asked: "Where do the plants grow necessary for the manufacturing"?

A. Yes.

x-Q. 11. What do you understand by that?

A. Where do the necessary plants for the manufacturing grow?—I have replied: they grow abroad.

374 The exotic plants grow abroad, the cultivated plants grow in the gardens and the wild plants grow in the group of the Grande Chartreuse and elsewhere.

By Mr. Kelly (to the stenographer): Will you go back to the reply that the witness made to this question. It is after the series of questions you have just read: "Where do the plants necessary for the manufacturing grow"?

(The stenographer reads question 32 of the

375 direct interrogatories, and the reply).

x-Q. 12. Then for you there is no importance to be attached to the place where these plants are found?

A. I do not think so.

x-Q. 13. None?

By Mr. Bonnet: I make an objection, the witness not being an expert.

376 x-Q. 14. They can grow either on the mountains or on the plains?

A. Are you speaking of the plants that I supply?

x-Q. 15. I speak of the necessary plants for the making of chartreuse?

A. You speak of the plants of the country, not exotic plants?

x-Q. 16. I speak of the plants necessary for the making of chartreuse?

A. I will reply that among the plants necessary for the making of chartreuse there are exotic plants. I

377 know my botany well, but still I am not sufficiently competent to say if these exotic plants grow on the mountains, on rocks, in the plains or by the water-side.

x-Q. 17. Let us put the exotic plants aside. I put the same question to you on the subject of French plants ?

A. Well, these plants grow, according to their species indistinctly either on the mountains, in the forests, in the meadows or in the cultivated fields. 378

x-Q. 18. And the plants necessary for the making of chartreuse can grow indifferently on the mountains and on the plains ?

A. Let us understand one another : that depends on the species.

x-Q. 19. Ah ! there are species then which cannot grow indifferently on the mountains and on the plains ?

A. Naturally.

x-Q. 20. What are those species ? 379

By Mr. Bonnet : Objection.

A. Ah, that—It would be necessary to be a professor of botany and to practice to be able to remember that, for you know that there is a limited altitude for certain plants—In the same way as the fir usually grows at an altliude of 1,200 metres, it is found at 300 and 400 metres.

x-Q. 21. You say that since 1861 your ancestors and 380 you have supplied the plants to the Carthusians ; you ought to have some cognizance about the supply ?

A. About the supply, but not about the place where they grow, for it is not I who gathered them.

x-Q. 22. You do not know what are the plants which ought to grow on the mountains and the plants which ought to grow on the plain ?

A. I could not determine in an absolute manner.

x-Q. 23. You cannot indicate to me a single plant,

381 for instance, necessary for the making of chartreuse, which ought to grow on the plain ?

A. A single plant which ought to grow on the plain ?

By Mr. Bonnet : I make an objection ; a demand which tends to make the witness state, who is bound by professional secrecy, what are the plants, the nature of the plants that he de-
382 livers, is a demand to which I make opposition that a reply be given.

By Mr. Kelly : You have produced this chemist, I think, bound by professional secrecy as a witness, and you have yourself authorized him to reply to these questions.

By Mr. Bonnet : Within certain limits.

By Mr. Kelly : And I insist on a reply to this question or I will demand that the whole of the testimony of the witness be struck out.

383 By Mr. Bonnet : I persist in my restriction ; the witness can reply on all questions, but those which are of a nature that may lead to a divulgement, even partial, of the secret of the manufacturing of chartreuse, to those questions I make an opposition to any reply being given.

By Mr. Kelly : I protest against the silence of the witness.

x-Q. 24. Do you know a plant which is called an-
384 gelica ?

A. Yes, sir.

x-Q. 25. Is it a plant which enters into the making of chartreuse ?

A. I cannot tell you that, Sir.

x-Q. 26. You have never supplied angelica to the Carthusians ?

A. I have not to tell you the plants that I supplied to the Carthusians.

x-Q. 27. Do you know balm mint ?

A. Yes, Sir.

385

x-Q. 28. Is balm mint necessary for the making of chartreuse?

A. I cannot reply to you about that.

x-Q. 29. Do you know hyssop?

A. Yes, Sir.

x-Q. 30. Is it necessary for the making of chartreuse?

A. I do not reply to you about that.

x-Q. 31. Do you know hypericum?

A. Yes, Sir. 386

x-Q. 32. Is it necessary for the making of chartreuse?

A. I cannot reply to you.

x-Q. 33. You see that I know a few plants which are necessary for the making of chartreuse?

By Mr. Bonnet: I object to the question as leading.

A. I cannot answer you about that. 387

x-Q. 34. Do you know a little of the literature on this question?

A. The literature on this question? I confess to you that I do not quite see the meaning.

x-Q. 35. The bibliography of the question?

By the Commissioner: On the question of what?

By Mr. Kelly: About the making of chartreuse. 388

A. Yes, I possess certain—

x-Q. 36. Then you know that for forty years the plants that enter into the making of chartreuse have been published?

A. The plants entering into the making of chartreuse have been published? Some plants which enter into the making of chartreuse are published, but the plants which enter into the making of chartreuse are not published.

389

x-Q. 37. You believe that about that there is still a secret ?

A. I do believe it.

x-Q. 38. Well then, without revealing to me this secret, do you believe that the hypericum grows on the plain ?

A. There is one thing certain, that is that from 1500 metres it is no longer found.

x-Q. 39. Above 1500 metres ? Above or below ?

390 A. Above.

x-Q. 40. Above, it is no longer found ?

A. Above 1500 metres ?

x-Q. 41. And now can you tell me the level below which it is no longer found ?

A. Well, from 1500 metres as far as our regions, that is to say as far as the altitude of Grenoble— some is found but it is perhaps lower.

x-Q. 42. Have you gathered hypericum at Grenoble ?

A. I have myself gathered hypericum, not to sell
391 it but for myself, when I was studying botany.

x-Q. 43. Is it the hypericum which is at Grenoble which you think neceesary for the making of the Grande Chartreuse ?

A. I do not answer you about that for the same reason that I did not reply just now.

x-Q. 44. But you say that you gathered hypericum then as a botanist and not in your professional capacity ?

A. No.

392 x-Q. 45. Therefore I can conclude from this reply that you do not send to the Carthusians the hypericum that you gathered on the banks of the River Isère ?

By Mr. Bonnet : I raise an objection, this demand again leads to the divulging a part of the secret of manufacturing.

By Mr. Kelly : I insist on my question—

x-Q. 46. The hyssop which is found in the valley of the Chartreuse, that is to say of the Grande Chartreuse

393

itself, has it the same perfume as the hyssop which is found at Grenoble?

By Mr. Bonnet: I make objection, the witness not being an expert.

A. That is a question of appreciation, I am not sufficiently expert.

x-Q. 47. You are not sufficiently expert for that? You have never sold plants to any other persons than 394
the Carthusian Fathers?

A. Plants to any other persons than the Carthusian Fathers?

x-Q. 48. Yes?

A. I am a herborist, I sell a little to everybody.

x-Q. 49. Have you sold any, for instance, to Mr. Cusenier?

A. No, never.

x-Q. 50. Have you sold any to persons who imitate chartreuse? 395

A. There are so many counterfeiters of chartreuse that I should be much embarrassed to say if I had supplied any to such and such a person.

x-Q. 51. If a distiller asked you for some hypericum, for the manufacturing of a liqueur to imitate chartreuse, where would you go to pick it?

A. Where should I go to pick it? I should not go and pick it.

x-Q. 52. How would you fulfil the order?

A. By getting in a supply and selling hypericum to 396
him.

x-Q. 53. And from where would the people who supply you get this hypericum?

A. For that, it would be necessary to follow them in order to know.

x-Q. 54. You do not know it at all?—you do not know it at all?

A. Without following them step by step I do not know whether they got it on such a day there and on such a day here.

397

x-Q. 55. You have sworn to tell all the truth ?

A. Yes, Sir.

x-Q. 56. I ask you if you do not know pertinently that the hypericum which is used for chartreuse or the imitations of chartreuse is gathered on the estate of the Grande Chartreuse ?

A. No, Sir.

x-Q. 57. You do not think so ?

A. That is an appreciation.

398 x-Q. 58. I ask you for your appreciation ?

By Mr. Bonnet : I make an objection, the witness is not an expert.

A. If—

x-Q. 59. Do you think so or not ? Do you believe that these people gather the hypericum on the estate of the Grande Chartreuse ?

A. There is nothing impossible about it.

399 x-Q. 60. If you had to give orders to some people to get you some hypericum for the making of an imitation of the Grande Chartreuse, where would tell those people to go and gather it ?

A. I cannot reply, for it would not occur to me to counterfeit the liqueur of the Carthusian Fathers.

x-Q. 61. Do you know of the existence of a liqueur which is called *liqueur jaune* (yellow liqueur) ?

A. No, Sir.

x-Q. 62. Does everybody—

400 A. I have heard of the yellow liqueur.

x-Q. 63. You do not know what it is ?

A. No.

x-Q. 64. Do you mean to tell me that you do not know that the distillers of Paris all make liqueurs which have the taste of chartreuse, without putting the same into bottles which imitate the chartreuse ? You know that, do you not ?

A. No, I do not know at all.

x-Q. 65. You do not know it ?

A. No.

401

x-Q. 66. Do you know the use to which the plants are put which you sell? what is the purpose for which the plants you sell are intended?

A. Most of the plants I sell are for diet-drinks.

x-Q. 67. At least you are a herborist by profession, are you not?

A. I am a chemist-herborist by profession.

x-Q. 68. You know a little about the use, at least—the object for which the plants are ordered from you?

A. Yes, some plants. 402

x-Q. 69. You can guess a little?

A. Yes, a little.

x-Q. 70. Do not the distillers come to you for plants?

A. It happens sometimes that the distillers come to me for plants.

x-Q. 71. Have you not even many distillers among your customers?

A. Many?—No, it is even an exception.

x-Q. 72. You have some?

A. I have some. 403

x-Q. 73. What are the plants that you sell to the distillers?

A. To the distillers there are sold cloves, there is sold mint, there is sold orange peel, there is aniseed.

x-Q. 74. Do not the distillers ask you for plants which grow on the Grande Chartreuse?—on the estate of the Grande Chartreuse?

A. The distillers never tell me where the plants, that I sell to them, ought to be gathered.

x-Q. 75. And if a Paris distiller should order mint 404
of you, for instance, what do you understand by that. Why should he come to you at Grenoble to have mint?

A. I would begin by asking him what kind of mint he wanted, for there are several kinds of mint.

x-Q. 76. And if he told you that he made a liqueur which imitated the taste of chartreuse, where would you go to find the mint?

A. I would not give him any?

x-Q. 77. No?—You would not give him any?

A. No.

405

x-Q. 78. Is it on principle that you would not give him any?

A. Absolutely.

x-Q. 79. For what is angelica used?

A. Angelica is used for making diet-drinks, is used for making sweets, angelica is candied.

x-Q. 80. Do they make liqueurs with it also?

A. I believe that liqueurs can be made with it.

x-Q. 81. What part of the plant of the angelica is
406 used?

A. In pharmacy the three parts of it are used: the seed, the leaves and the root.

x-Q. 82. The root, they use the root dried do they not?

A. Yes, Sir.

x-Q. 83. And for the leaves and the seed?

A. Dried also.

x-Q. 84. Dried also? You are sure of that?

A. Yes, Sir. It may be used fresh, I do not say to
407 the contrary, but in any case, with my firm, I only sell dried plants.

x-Q. 85. Do you know, yes or no, whether the distillers who use angelica for making liqueurs which resemble chartreuse use the leaves and the seed fresh or dried?

A. As far as it is possible to know I believe that those gentlemen only use the dry plants.

x-Q. 86. You are not sure of it?

A. Not absolutely.

408 x-Q. 87. And balm-mint?

A. The same thing.

x-Q. 88. Do they use the root of the balm-mint?

A. I do not think so.

x-Q. 89. You do not sell it?

A. No.

x-Q. 90. You only sell the top part?

A. The top part.

x-Q. 91. And how is the top part of the balm-mint used?

A. Ah—that—I am not a distiller.

409

x-Q. 92. But you have declared that you knew, of your knowledge, that the Carthusian Fathers used all the plants dried, did you not?

A. Yes, Sir.

x-Q. 93. Are you sure that you used the balm-mint in a dry state?

A. I cannot answer you, Sir, because you specify. I cannot answer you on one plant.

x-Q. 94. On one plant?

A. On one plant. 410

x-Q. 95. Then you make exceptions as to the balm-mint?

A. I make exceptions each time that you interrogate me on one particular plant.

x-Q. 96. Do you know that there were certain plants that the Carthusian Fathers used in a fresh state? You do not know that?

A. No, I think not. Do you ask me: "Are there plants that the Carthusian Fathers used in a fresh state?" To that I say: No, except the plant I cited 411 a while ago, that is to say the small orange.

x-Q. 97. Are you sure that they did not use them in a fresh state?

A. I am sure that the Carthusian Fathers only used one plant in a fresh state, of which I spoke just now: of a part of the plant rather, that is the small orange.

x-Q. 98. How do you know that? How do you know that they used no plant, except the orangette, in a fresh state?

A. I know it. 412

x-Q. 99. How?

A. Because those gentlemen told me so.

x-Q. 100. It is then simply on their declaration?

A. And because I told you a while ago—I do not remember any more, it is so confused—I tell you that I know because they told me so and because the plants that they received in a fresh state were dried in a drying-room which I have seen at Fourvoirie.

x-Q. 101. But one may have a drying-room without using it for all the plants, is that not so?

413

A. Ah, that is certain.

x-Q. 102. So you have no personal knowledge about the question whether, yes or no, the Carthusian Fathers used certain plants in a fresh state?

A. I answer you by the reply I gave you just now.

x-Q. 103. That is to say that you have not?

A. That is to say that I have the affirmation of the Carthusian Fathers that they only used the plants in a dry state.

414 x-Q. 104. You have never done the manufacturing of chartreuse yourself?

A. No, Sir.

x-Q. 105. Then you do not know the manufacturing of chartreuse itself?

A. No, Sir.

x-Q. 106. Then you do not know of your own knowledge, whether yes or no the Carthusian Fathers used certain parts of certain plants in a fresh state?

A. I answer you by the conversation I have had and
415 the reply they made to me on this subject.

x-Q. 107. You say that you supply still the Carthusian Fathers with wild plants, gathered in the group of the Grande Chartreuse, do you not?

A. Yes, Sir.

x-Q. 108. I have mentioned a list of plants that are perfectly well known as entering into the making of chartreuse. I ask you now who are the people who furnish you with these plants?

A. Who are the persons who furnish me with these
416 plants? It would be very difficult for me to give you the names of all these persons.

x-Q. 109. Give me the names of those which you can remember?

A. There is the name of one person, who is mentioned there, on the way-bill, who is at St. Pierre d'Entremont.

x-Q. 110. Who is called?

A. Mr. Dejey. You will find that on the way-bill.

x-Q. 111. How do you write that?

417

A. The spelling is there—I do not retain the spelling of names.—Look : Dejey.

x-Q. 112. Can you give me any other names?—can you give me any other names ?

A. Yes,—Madame Baffert, of Saint Laurent du Pont.

x-Q. 113. And again ?

A. The others ? My word ! I have retained the most important.

x-Q. 114. Mr. Dejey is a school-master, it seems ?

418

A. Yes, Sir.

x-Q. 115. A congregationalist ?

A. Of that I know nothing.

x-Q. 116. Is it he who gathers the plants himself ?

A. I do not know.

x-Q. 117. You know, I think, that he has the plants gathered by others ?

A. I know that he does not gather them all himself.

x-Q. 118. That he has the gathering done by others ?

419

A. That it is done by others.

x-Q. 119. Do you know the names of the persons whom he employs ?

A. Not in the very least, Sir.

x-Q. 120. You do not occupy yourself at all then as to where the plants come from ?

A. On the question of the source the plants come from. Yes, I do indeed attend to that.

x-Q. 121. How do you preoccupy yourself with that ?

A. Well, because their are certain regions, are there not, which produce plants having qualities that the other regions have not. 120

x-Q. 122. Ah ! which are the regions which are the best for plants ?

A. Well, for saffron, for instance, it is the province of Catinais, for cinnamon it is the Island of Ceylon, for senna it is Egypt.

x-Q. 123. I am speaking now of the plants which come from the group of the Grande Chartreuse. Do you not pay any attention at all as to where those plants come from ?

421

A. Yes, indeed, Sir, I attend to that.

x-Q. 124. Tell me what are the orders you give, the indications you give for the gathering of these plants?

By Mr. Bonnet: I make an objection.

By Mr. Kelly: For what reason.

By Mr. Bonnet: For the reason that the reply may lead to divulging of a part of the secret of manufacturing.

422 By Mr. Kelly: I insist on the reply and I protest against the interruptions of Mr. Bonnet, which are of a nature to indicate to the witness when he should answer and when he should not answer, and even, if need be, to put him on his guard.

x-Q. 124. Is repeated.

A. Well, Sir, I will not give you any indication, not because Mr. Bonnet interrupted but because I am
423 always opposed, as far as I am able, to the manufacturing of all liqueur resembling that of the Carthusian Fathers, and I have never wished to be in any way whatever an instrument, even indirect, in this manufactory.

x-Q. 125. You have already replied that there was no indication to give, that the necessary plants for the making of Grande Chartreuse grew indifferently on the mountains and in the plain. How do you reconcile these two replies?

424 A. The plants. Will you repeat the question? (The question is repeated).

I maintain my reply, that the plants necessary for the making of chartreuse grow indifferently, according to their species, always, either in the plain or on the mountain.

x-Q. 126. Then, to fulfil the orders of the Carthusian Fathers you do not have to concern yourself at all as to the origin of the plants?

A. I have not to concern myself as to the origin? Yes, indeed, I have to concern myself as to the

425

origin. If I have an order, if I have to supply plants which grow in the South, I do not ask for them from the region of the Grande Chartreuse, because in that case plants would be given me which would not be plants coming under the conditions under which these plants should grow in order to contain what was wanted of them.

x-Q. 127. I only speak of the plants which grow in the group of the Grande Chartreuse. I have not spoken of plants beyond those which grow in the group 426
of the Grande Chartreuse.

A. Plants growing in the group of the Grande Chartreuse? I attend to the getting of plants coming from the group of the Grande Chartreuse.

x-Q. 128. Is there no choice of locality in the group of the Grande Chartreuse?

A. A choice like—like what?

x-Q. 129. There is the north side, there is the south side.

A. No, sir. 427

x-Q. 130. There is the western slope, there is the eastern slope, there is the estate of the Grande Chartreuse: you do not pay any attention at all to the question as to what part of the group the plants come from?

A. No. I think that the plants which grow on the group of the Grande Chartreuse are not special to any really limited spot; I believe that they grow in a general way in all the group of the Grande Chartreuse.

x-Q. 131. And you believe then that the plants that 428
grow to the north have the same perfume and the same qualities as the plants that grow to the south?

A. In order to determine that it would be necessary to take a certain quantity of flowers, which you would gather yourself on the north and that you would compare with the same quantity of flowers that you would gather yourself on the south. That I have not done.

x-Q. 132. And you are not enough of a herborist to answer a simple question whether a flower that grows

429 on the north has the same perfume as the same species of flower that grows to the south ?

A. I will reply that, in a general way, certain flowers grow indifferently to the north and to the south with the same qualities.

x-Q. 133. And hypericum, where does it grow with the most perfume ?

A. The perfume of the hypericum ? You know, there is not much ; essence of hypericum has never been
430 made as I know of.

x-Q. 134. And it is indifferent to you, then, whether the hypericum is gathered on the mountains, to the north or to the south, or on the plains ?

A. Each time that we receive the plants we do not follow those who do the gathering of the plants to know whether they gather them on the north or on the south, but when we get the plants we assure ourselves that they are in a perfect state of dessication, that they are fresh, that is to say I mean by fresh that they are
431 not stale, that they are not mouldy, and that they have some perfume.

x-Q. 135. And the spot where these plants are gathered is absolutely indifferent to you? Yes or no ?

A. So long as the plants possess the qualities that I need of them.

x-Q. 136. And you do not know that a difference can exist as a result of the locality ?

A. Yes, indeed. When you want to have very perfumed orange leaves, you do not go and ask for it at
432 the Grande Chartreuse, you get it in the south.

x-Q. 137. I am not asking you questions about orange blossoms ?

A. I tell you that in a general way, for certain plants, the plants which grow in the north you ask for them in the north ; the plants that grow in the south, you ask for them in the south ; those which grow in the group of the Grande Chartreuse, you do not ask for them in the south, you ask the persons who do the gathering in the group of the Grande Chartreuse.

x-Q. 138. You have said that you supplied many

433

more plants to-day to the Carthusian Fathers than before ?

A. I have said that I supplied them with many more cultivated plants and wild plants than before their expulsion.

x-Q. 139. In what proportion ?

A. I have not made a proportion, but—

x-Q. 140. I ask you to make it ?

A. A considerable quantity.

x-Q. 141. How many plants did you send to the 434
Carthusian Fathers last year ?

A. I supplied for the value of about 12,000 to 15,000 francs.

x-Q. 142. What may that represent by weight ?

A. By weight, that represents not a little. It would be necessary for that to make a calculation, and I am not very strong at mental reckoning. Perhaps, what shall I say ? 5,000, 6,000, 7,000, 8,000, 10,000 kilograms.

x-Q. 143. And about how many plants did you supply per year to the Carthusian Fathers before ? 435

A. How much ? For about 20,000 francs.

x-Q. 144. Before their departure ?

A. Before their departure.

x-Q. 145. Then you supplied them with more plants before their departure than now ?

A. Yes, Sir.

x-Q. 146. I had understood to the contrary.

A. I maintain my answer. I supplied them with more plants in this way, that I furnished them with a greater number of plants, that is to say I supplied 436
them with plants that I do not supply to them now ; the exotic plants. I no longer supply them.

x-Q. 147. Then I want you to establish the proportion between the wild plants and the cultivated plants to-day and before their departure ?

A. The proportion ? I maintain the estimate that I made just now, a near estimate, that is to say that the amount I supplied to them last year represented about 5000, 6000, 7000, 8000 kilograms.

x-Q- 148. And how much the cultivated and wild

437 plants that you supplied to them before their departure?

A. Oh, it was a less proportion.

x-Q. 149. About how much?

A. About? Think, I can only tell you the figures, I do not even know if they are about right. How long a time is it that the Carthusian Fathers are gone? Three years. I remember the figures which I quoted you just now, in what proportion the wild plants figured
438 in this amount? I cannot even tell you a near figure.

x-Q. 150. However you were very positive when you were asked if you supplied them with more plants now than before. Now I ask you what is the difference between the quantity which you supply at the present time and that which you supplied before?

A. I supply them with cultivated plants and wild plants in much larger quantities than before, that is all I can say. I cannot make a proportion as I might make error.

439 x-Q. 151. Do you supply them with twice as much?

A. It would be difficult to—

x-Q. 152. Much more than twice?

A. I cannot give a proportion, and I maintain my answer.

x-Q. 153. Do you supply three times as much?

A. I repeat that I cannot give a proportion, and I maintain my answer. That is the same question in another form.

x-Q. 154. Do you supply four times as much?

440 A. I have the habit of keeping to my word.

x-Q. 155. What?

A. I have the habit of keeping to what I have said.

x-Q. 156. What do you call the group of the Grande Chartreuse? What do you understand by the group of the Grande Chartreuse?

A. I may tell you that I am not a geometrician.

441

RE-DIRECT INTERROGATORIES BY MR. BONNET:

Re-d. Q. 1. You have told us, Sir, a while ago, that sometimes it happens that you supply plants to distillers. Do you supply them with the same plants as those which you supply to the Carthusian Fathers?

A. The same plants? *Some* of the same plants, some plants which are used for making liqueur.

Re-d. Q. 2. Do you supply them with all the plants that you delivered to the Carthusian Fathers? 442

A. No.

BY MR. KELLY: I make an objection to this question as leading.

Re-d. Q. 3. When wild plants are delivered to you do you trouble yourself in finding out whether they came from the part of the group of the Grande Chartreuse which belongs to the parishes, to private persons or to the State? 443

A. Oh, absolutely no.

SESSION OF SATURDAY, February 10th, 1906, } Continued. }

DÉSIRÉ EMANUEL JOSEPH BOITON, expert land surveyor and Forester, of No. 9 Place Victor Hugo, Grenoble, France, temporarily sojourning in Paris, France, aged sixty-two years, having been produced, 444 sworn and examined on behalf of the Plaintiff, doth depose and say as follows:

DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiffs:

Q. 1. Will you give me your name?

A. Boiton.

Q. 2. Your christian names?

A. Désiré Emanuel Joseph.

445

Q. 3. Your profession?

A. Former Geometrician of the Register of Lands, of the first class, and expert Geometrician and Forester at Grenoble, before the Tribunal and the Court of Appeal.

Q. 4. Your age?

A. Sixty-two years.

Q. 5. Your residence?

A. Place Victor Hugo, No. 9.

446 Q. 6. In what city?

A. Grenoble.

Q. 7. How long have you been in Grenoble?

A. Since 1st November, 1870.

Q. 8. How long have you exercised your profession of land surveyor? at Grenoble?

A. Since that day, 1st November, 1870.

Q. 9. Do you know the environs of Grenoble?

A. Very well, perfectly.

Q. 10. Do you know the group of the Grande
447 Chartreuse?

A. Yes.

Q. 11. Have you been called upon to do any surveying in the group of the Grande Chartreuse?

A. Very many, often.

Q. 12. Of what did these operations consist?

A. In making plans, boundaries, valuations, various maps, geographic maps or otherwise.

Q. 13. You say maps, what kind of maps?

A. Maps of the district, of the Chartreuse especially.

448 Q. 14. What is the extent of the group of the Grande Chartreuse?

A. What is called the group of the Grande Chartreuse contains 45,850 hectares.

By Mr. Kelly: How many?

The Witness: 48,850 hectares.

Q. 15. To whom does the group of the Grande Chartreuse belong?

A. To private persons, parishes, and the State.

449

Q. 16. What is the extent of the part which belongs to the State?

A. As to extent it is 6,500 and some odd hectares, but I can give you documents which will show you within a few hectares.

Q. 17. And the part which belongs to the State, what is the extent occupied by forests?

A. About one-eighth of the group: that is to say 6,500—that is what I said just now, 6,500 hectares.

Q. 18. I put the following question to you: in the 450
State domain what is the extent occupied by forests?

A. In the domain of the State?

Q. 19. Of the State?

A. Well, in the domain of the State, I have said that the State was owner of 6,500 hectares—6,578, I now remember the total.

Q. 20. Of what does the domain of the State consist?

A. Of forests, pasturage, fields and grass-clad mountains, that is to say they are fruit bearing, that is 451
mountains occupied in the summer.

Q. 21. What is the extent occupied by the fields of the grass-clad mountains?

A. 200 hectares.

Q. 22. By fields, pastures and the grass-clad mountains. Of what does the remainder of the group belonging to the State consist?

A. Of cultivated lands, that is to say cultivated gardens.

Q. 23. What is the extent of forests in the domain 452
of the State?

A. Six thousand, consequently 6,378, something like that—That is the substraction between 6,578 and 200 hectares, 200 hectares taken from 6578 there remains 6,378.

Q. 24. Specify. What is the total extent of the domain belonging to the State in the Grande Chartreuse?

A. The domain of the State in the group? 6,578 hectares. That is what belongs to the State, of which

453 200 hectares are enclosed, they are fields, pastures and grass-clad mountains.

Q. 25. And the remainder ?

A. Belongs to private persons.

Q. 26. I put this question to you. And the remainder of the State domain, what does it contain ?

A. The remainder it is—What do you mean by the remainder ?

Q. 27. You told me just now that the State domain
454 included 6,578 hectares ; in this total there were 200 hectares of pasturage, fields and grass-clad mountains, and I ask you of what does the remainder of the State domain in the group of the Grande Chartreuse consist ?

A. At the most three hectares of cultivated lands and gardens.

Q. 28. Is there nothing else ; we are not getting to 6,578 hectares.

455 By Mr. Kelly : I object to the question as leading.

A. I do not grasp the question.

Q. 29. Are there forests in the State domain ?

A. These forests—There are 6,378 hectares in forests ; there are 200 hectares in fields and pastures and three hectares at the most in cultivated gardens.

Q. 30. What is the extent of the property of private persons and parishes ?

456 A. There are consequently 41,000 and some odd, 42,000.

Q. 31. 42,000 what ?

A. Which are—

Q. 32. 42,000, you say an extent of 42,000. What ?

A. 42,000 hectares.

Q. 33. What is the extent of forests in the private estates ?

A. 16,000 hectares about.

Q. 34. What is the nature of the other lands of the private estates ?

457

A. Land, fields, pastures, grass-clad mountains and some rocks.

Q. 35. What is the extent occupied by fields belonging to private persons and parishes ?

A. 6.000 hectares at least.

Q. 36. You told us that in all this State domain there was three hectares at the most of cultivated lands : what do you mean by cultivated lands ?

A. I alluded by that to the gardens surrounding Curiére, Fourvoirie, the Correrie and the Convent of 458
the Grande Chartreuse.

Q. 37. Do you know the Chougnes estate ?

A. Yes.

Q. 38. To whom did it belong ?

A. To the Carthusians.

Q. 39. Is it in the group of the Grande Chartreuse ?

A. No.

Q. 40. At what distance from the group of the Grande Chartreuse is it ?

A. 25 kilometres. 459

Q. 41. To support these declarations which you have made, can you produce documents ?

A. Yes. Here is firstly a map of the Ordnance Survey. (The map is annexed and marked Exhibit Q.) Also a map at 200,000th part. (The map is annexed and marked Exhibit R.) upon which the position of Chougnes is marked ; then finally the estates which formerly belonged to the Carthusians and which are enclosed in the forest domains. This is the poster which was put up for the sale, that is of 92 hectares 460
which are enclosed in the forest domain.

By Mr. Kelly : I object to this poster as not being sufficiently identified—

By Mr. Bonnet : Will you sign this ? (pointing to the poster.)

The witness signs and the poster is annexed as Exhibit R^2.

By the Commissioner : Sign your name at the bottom.

461

By Mr. Kelly: —and as having no connection with the question at issue.

By the Commissioner: You will sign the others when these gentlemen have finished.

By the Witness: They are signed.

By the Commissioner: You have signed them? Is this signed and you acknowledge your signature?

The Witness: Yes.

462 By the Commissioner: And the other also?

The Witness: The other also.

Cross-Interrogatories by Mr. E. Kelly, representing the Defendants:

x-Q. 1. How, what is—what do you mean by the group of the Grande Chartreuse?

A. It is the group comprised between the valley of St. Laurent du Pont, the valley of Gresivaudan, Grenoble
463 and Chambery, that is to say all the mountains which are comprised in the description which I have given you.

x-Q. 2. And which is marked in red on the map?

A. In red, yes, Sir.

x-Q. 3. You know the domain of the Grande Chartreuse very well?

A. Oh, yes. sir.

Mr. Kelly produces a map.

464

x-Q. 4. Do you recognize this map as a correct map of the Grande Chartreuse, of the estate of the Grande Chartreuse?

(The witness examines the map.)

A. Approximately. There are changes in certain details—in fact, in general. I do not see here at this point what is the limit. In the interior I do not see the enclosures to which I alluded just now. There is, in this group, the former personal property of the

465

Carthusians, which makes part of this whole which is colored like the green. Is there no inscription? Ah, yes, it is shown.—These four parcels, that is what I was looking for.—Yes, pretty nearly.

By Mr. Bonnet (to the Commissioner): Will you please have this map identified?

By Mr. Kelly: I produce this map for the purpose of identification.

By the Commissioner: The witness must sign 466
it.

By Mr. Kelly: No, he has not to sign it.

By Mr. Bonnet: Then I make a formal objection.

By Mr. Kelly: It is not produced yet.

By Mr. Bonnet: You have just said, "I produce."

By Mr. Kelly: "For the purpose of identification,"

By Mr. Bonnet: Well, then? 467

(The Witness:) Approximately it is the Chartreuse, but it would be necessary in order that I might certify that this plan is that of the Chartreuse that I should verify it. It is not at a glance that I could verify such a work.

x-Q. 5. I only ask your general opinion?

A. If it is general—

x-Q. 6. The domain is shown on this map in green, 468
is it not?

A. No, those are woods of big trees.

x-Q. 7. In green and red?

A. That is it—that is what is called the State property, and afterwards, these, which are something else, these are enclosures.

x-Q. 8. The enclosures are the fields of the Carthusians in liquidation. Will you tell me if the line which separates the green from the white follows the line of the cliffs?

A. No, it sometimes follows the line of the cliffs.

469 The ordnance map will show you; you will see it on that. What do you call cliffs? You mean to say rocks.

By Mr. Kelly: The rocks.

The Witness: The ordnance map shows you, as it is a topographic map.

x-Q. 9. Will you show me the places where this line
470 does not show the line of cliffs?

A. It is necessary that I take this map then (the witness takes the ordnance map), that I may remember. I must have the map by my side. What is this group?

By Mr. Bonnet: I would remark that it is impossible to keep a clear account of the testimony of the witness in the conditions under which the interrogatory is made.

471 x-Q. 10. Will you show me the places where this line does not indicate the line of cliffs?

A. Here for instance—here.

x-Q. 11. Can you show by—

A. No, for that it would be necessary that I should make a special study.

x-Q. 12. I wish to say that instead of pointing with a finger give indications that the stenographer can take down.

A. I could not say until I had made a study by
472 comparison. It is not possible at a glance, except the large lines which I show you, to be precise at one point or another.

x-Q. 13. You have pointed with a finger to a place called the forest of Malissart?

A. Yes, here it is.

x-Q. 14. Will you follow the outline where you will see from time to time the word "Cliffs" written (*Falaises*) and tell me if these words really show the places where the cliffs begin?

A. That is what I do not see, it is written in pencil.

473

It is inexact, this, in one part, this—here—it is exact here.

x-Q. 15. I ask you in the places where you see the word " Falaises " (cliffs) written, does that word show the place where the cliffs begin ?

A. I see here the word " Falaises " (cliffs) ; what does it mean ? I do not know what is meant by the word cliffs. Is it from here to there ? Is it from there to there ? Is there a break there, or is there not ?

x-Q. 16. *Grosse mode*, do not the cliffs follow the 474
line of boundary between the green and the white at the places where you see the words " Falaises " (cliffs) ?

A. Partly—partly—

x-Q. 17. Where do you see places where the cliffs do not follow this outline ?

A. There, here.

x-Q. 18. I am only speaking of the green part round the Convent of the Chartreuse.

A. Consequently in this group, in the big group. 475

x-Q. 19. Yes, that is it !

A. That is to say here ?

x-Q. 20. Yes ?

A. Well—here is a part that I show you, which is this—

x-Q. 21. Are there really cliffs there ?

A. There—not there.

x-Q. 22. There are no cliffs there ?

A. Not here, there are there—there are not there—this is inexact. 476

x-Q. 23. You must try to make your reply in a manner that the stenographer can understand by indicating the words on the map instead of—

A. I do not know what is meant by the word " Falaises " (cliffs). Does it comprise—is it from there to here or from there to there—I do not see. You must point out this spot, I will tell you at once. I have but to compare the map.

x-Q. 24. The convent of the Grande Chartreuse is

477 situated in a cirque, is it not, which is surrounded by cliffs ?

A. No, it is open in different manners ; there is a breach, which is the breach of the Guiers Mort, which descends on the valley of Saint Laurent. The group of the Chartreuse has breaches lengthwise which lead to Grenoble striking off by a serie—the group of the Chartreuse ?

x-Q. 25. No, I am speaking, am I not, of the con-
478 vent ?

A. I am coming to the convent—I am getting there —has breaches lengthwise, the waters of these longitudinal formations run from Chambéry to Grenoble, and there it is cut—these hollows, these little valleys, which go in this direction, are cut by a valley in the transversal direction. It is there that the Guiers Mort is situated, which passes at the foot of the Chartreuse, and that is why it is open a little to the right and a little to the left. It is not a closed circle, that is what
479 I mean to say.

x-Q. 26. But there is nevertheless a natural boundary where the convent of the Grande Chartreuse is, is there not ?

A. What do you call a bonndary ? Is it a boundary as far as the group is concerned ?

x-Q. 27. I mean a boundary, nothing else.

A. This word can be interpreted by two—by several different ways. The word boundary may be in the sense in which I have replied to you—in several senses
480 —In the way in which the question is put to me it means that it is a part of the whole. That is what you mean to say, perhaps ?

x-Q. 28. You know very well what is called a cirque, do you not ?

A. Yes.

x-Q. 29. Is there not a cirque there ?

A. No, it is not the word complete circle.

x-Q. 30. But it produces that effect to a layman, of a circle ?

A. No, I will not admit that like that.

481

x-Q. 31. However the guides call it a cirque ?

A. It is a little valley, a gorge. I like that expression better.

x-Q. 32. A gorge ? A closed gorge ?

A. It is closed ? It has the shape of my hand, that is to say that there are openings in different directions, which means that it is not closed.

x-Q. 33. At least nature has very well traced out the 482
domain of the Grande Chartreuse, has it not ?

A. Not the domain, the convent.

x-Q. 34. Let us leave the convent alone—

A. Yes, I like that better, because the domain of the Grande Chartreuse is on the contrary very scattered in its shape.

x-Q. 35. I am speaking now only of the domain around the convent. It is well defined by the cliffs, is it not ?

A. No, the convent is not defined by the cliffs, it is 483
but the end of the gorge, it is but a very small part of the locality. Around the convent there are forests, above forests, there are rocks which close this cirque of which you speak.

x-Q. 36. That is what I was trying to get at.

A. But it is not a cirque—

x-Q. 37. In the sense of a cirque ?

A. In the grammatical sense, if you wish to permit this expression.

x-Q. 38. In the technical sense ? 484

A. If you like.

x-Q. 39. It is what the tourists call a cirque ?

A. Yes.

x-Q. 40. And beyond this cirque other considerable forests ?

A. Yes.

485

SESSION OF SATURDAY, FEBRUARY 10TH, 1906, CONTINUED.

HENRI LECOUTURIER, Administrator, of No. 28 Rue du Mont-Thabor, in the City of Paris, Republic of France, age thirty-six years, having been produced, sworn and examined on the part of the Plaintiff, doth depose and say as follows:

486 DIRECT-INTERROGATORIES BY MR. J. BONNET, representing the Plaintiff:

Q. 1. Will you tell me your name?

A. Lecouturier.

Q. 2. Your christian name?

A. Henri.

Q. 3. Your profession?

A. Legal administrator.

Q. 4. Your residence?

487 A. 28 Rue du Mont-Thabor, Paris.

Q. 5. Your age?

A. Thirty-six years.

Q. 6. Are you or are you not the liquidator of the estate of the Order of the Carthusians?

A. I am liquidator.

Q. 7. By virtue of what judgment?

A. By virtue of the judgment of the Civil Court of Grenoble of the 31st of March, 1903.

Q. 8. To whom did you confide the making of the

488 liqueur?

A. Mr. Cusenier.

Q. 9. By verbal agreements or by written agreements?

A. By written agreements.

Q. 10. Do not these written agreements consist of two letters, the original one and the other qualified as an enclosure, which were written to you by Mr. Cusenier on the 5th of July, 1904?

A. Yes.

Q. 11. Have these agreements been recorded?

489

A. I think I remember that the letter of Mr. Cusenier has been recorded.

Q. 12. Is it not on the date of the 26th February, 1905, at the 3rd office under the No. 1093?

A. Your memory is better than mine.

Q. 13A. Can you produce these two letters?

A. No, because I consider that they are commercial documents containing information that I have not got to supply to competitors.

Q. 13. Your are opposed then—you refuse then to 490
produce these letters?

A. I have just replied.

Q. 14. Do you know the scientists of whom Mr. Cusenier spoke in his interrogatory?

By Mr. Kelly: I wish to make an objection to this question as having no relation to the cause now pending.

Q. 14. Do you know the scientists of whom Mr. 491
Cusenier spoke in his interrogatory, at which you were present, and who, he said, aided him in finding the formula that he used for the manufacturing of the liqueur that he made for you?

A. No.

Q. 15. Did not some difficulties arise between you and Mr. Cusenier?

By Mr. Kelly: I object to the question.

492

A. Quite so.

Q. 16. Did these difficulties lead to the sending out of writs?

By Mr. Kelly: I object to the question.

A. Yes.

Q. 17. How many proceedings—

By Mr. Kelly: I make objections to all these questions.

493

Q. 17. How many proceedings—

By Mr. Kelly : The same objection.

Q. 17. How many proceedings were begun betwe en Mr. Cusenier and you ?

A. Three principal suits and one claim of interference.

Q. 18. Can you produce the writs ?

494 A. No, because I consider that these writs contain allegations, on behalf of both sides, which have not yet been verified before the Courts, and which I do not think such to produce under those conditions.

Q. 19. Can you produce the correspondence exchanged between Mr. Cusenier and you ?

A. No, because it is an essentially commercial correspondence dealing with the affairs of the business of which I am the receiver.

Q. 20. Has one of the suits or the suits against Mr.

495 Cusenier been terminated by judgments ?

A. I have just told you no.

Q. 21. Have they terminated by a compromise ?

A. Yes.

Q. 22. Of what does this compromise consist ?

By Mr. Kelly : I object to the question.

A. Cancelling, pure and simple.

Q. 23. Can you produce the deed of compromise ?

A. No, I do not consider that it is of any use to pro-

496 duce it.

Q. 24. Do you know Mr. Garin, architect ?

By Mr. Kelly : I offer the same objection.

A. I have met him.

Q. 25. Have you had knowledge of a transfer of rights of Mr. Cusenier, as to the making and the sale of chartreuse, agreed to on behalf of Mr. Garin ?

A. I have had knowledge of a deed between Mr. Cusenier and Mr. Garin, but as to the interpretation of the

497

nature of this act I do not think that I have anything to explain, because there may be some suits and I do not wish to bind myself by the explanation which I may give here.

Q. 26. Have you not approved this transfer ?

A. I have approved the deed, but I do not characterize it as a transfer.

Q. 27. Did not this deed put an end to the suits pending between you and Mr. Cusenier?

A. Mr. Garin undertook to pay over 350,000 francs 498
indemnity to Mr. Cusenier if he would put an end to the suit against me. He has not paid over same.

By Mr. Kelly: I make an objection to all these questions until I make a statement to the contrary.

Q. 28. Ought Mr. Garin to have continued the manufacturing?

A. Certainly not. Mr. Garin had to make an agree- 499
ment with the liquidator, which agreement has never been made.

Q. 29. Who was to manufacture—instead of and in the place of Mr. Cusenier?

A. Mr. Marnier-Lapostolle.

Q. 30. I speak of the contract entered into between Mr. Garin and Mr. Cusenier. By the terms of this contract who was to manufacture?

A. The contract did not foresee the transfer of the
right to manufacture, so it could not foresee who was 500
to manufacture.

Q. 31. Did Mr. Cusenier continue to manufacture?

A. No, Mr. Marnier-Lapostolle was to have taken up the manufacturing when an agreement was come to by Mr. Garin and Mr. Marnier-Lapostolle with the liquidator.

Q. 32. On what date was this agreement of Cusenier-Garin accepted by you, signed?

A. In July, 1905; I cannot give the exact day.

Q. 33. Can you produce this agreement?

501

A. But I am not a party to the agreement, I have not a copy of it.

Q. 34. Did you approve of it?

A. I approved of it.

Q. 35. You cannot produce this agreement?

A. I have not the agreement.

Q. 36. Can you produce a copy?

A. I have copies at home, but I am not sure if they are exact; I have not seen the deed itself.

502 Q. 37. Can you produce the copies which you have at home?

A. Certainly not.

Q. 38. Was there not an agreement entered into between you and Mr. Marnier-Lapostolle, liqueur distiller, for the making of chartreuse?

A. Yes, after the failure of the attempt to make the Garin contract, Mr. Marnier-Lapostolle negotiated with me.

Q. 39. On what date did you make the contract with
503 Mr. Marnier-Lapostolle?

A. There were several engagements made with Mr. Marnier-Lapostolle.

Q. 40. Could you detail these contracts to us?

A. I do not see any reason to give details, for these contracts contained information about the making and the working up of the business, information which I have not got to give to competitors.

Q. 41. Can you produce these contracts?

A. No, for the same reason.

504 Q. 42. Have these contracts been confirmed by the Civil Court of Grenoble?

A. The word "confirmed" does not seem to me to be correct; that is to say the Court authorized me to make them.

Q. 43. On what date was this authorization given you?

A. In November, 1905, I do not remember exactly the day.

Q. 44. Can you hand in a copy of this judgment?

A. No. This judgment does indicate the principal

505 clauses of the two contracts: contract of cancelling Cusenier and the Marnier-Lapostolle contract, and under these conditions it would be exactly the same thing as if I handed in the contracts themselves, that is to say divulged the conditions of the contract.

Q. 45. Has your contract with Mr. Marnier-Lapostolle been executed?

A. That is a question about which I will not reply because I have suit against Mr. Marnier-Lapostolle.

506 Q. 46. Have you not entrusted Mr. Cusenier again with the manufacture of the liqueur?

A. But Mr. Cusenier was to have ceased only when Mr. Marnier-Lapostolle took it up again.

Q. 47. Cannot you produce the contracts entered into with Mr. Cusenier and the contracts entered into with Mr. Marnier-Lapostolle because that brings out that the liqueur manufactured by Mr. Cusenier was bad?

A. I do not understand well.

507 Q. 48. The motive which leads you not to produce these contracts, is it not because it would result by the reading of these contracts that the liqueur was bad?

A. Certainly not.

Q. 49. In the letter from Mr. Cusenier of 5th July, 1904, was there or was there not the following phrase: "You will entrust us with the monopoly for the manu-"facturing and the sale of the products of the Grande "Chartreuse and we agree to make and to sell these "products at our risk and peril on behalf of your 508 "Liquidation in return for which we will make you a "payment of 16% on our gross receipts, up to the "amount of 800,000 francs collected by us, and 20% "above this figure—

By Mr. Kelly: I interrupt to tell the witness that he is not obliged to reply to this question.

By Mr. Bonnet: "all expenses of any kind, "industrial, business, management, rent, taxes, "insurance, to be met by us."?

509

A. It is the general meaning, I do not remember if it is the exact text.

Q. 50. In the Marnier-Lapostolle contract do not the following phrases occur : " 1st. Mr. Lecouturier, " described as above, confides to Mr. Marnier- " Lapostolle, described as above, who accepts, instead " of and in the place of Mr. Cusenier, the continua- " tion of the working of the monopoly for the manu- " facture and sale of the products of the Grande
510 " Chartreuse, it being understood that Mr. Marnier- " Lapostolle agrees to make every effort to restore the " trade mark in question both by superior manufacture " and more active advertising and business organiza- " tion. 2nd. Consequently Mr. Marnier-Lapostolle, " by virtue of the above, agrees—3rd. To pay over " to the Liquidator a royalty reduced to 16% on " the net receipts on account of the cost price being " increased by the nature of and the quality of the " raw materials." Do you acknowledge that these
511 phases are to be found in the contract ?

A. I believe that the clause should be found in the contract ; it is exactly the general sense of the contract, and when Mr. Marnier-Lapostolle wished to enter into an agreement with me, as we have reduced the royalty from 20 to 16 per cent we explained this reduction for the motives indicated, or nearly so, in the text which you have just read.

Q. 51. Since you have been appointed receiver have the former marks of the Carthusian Fathers or are
512 they still the object of imitations ?

A. I think so.

Q. 52. Do you know if especially a Mr. Boitel has counterfeited these marks ?

A. He has done so in France to my knowledge, as I intervened in the trial in the course of which he was condemned.

Q. 53. Did not this Mr. Boitel use the empty bottles and labels of the Grande Chartreuse ?

A. I know absolutely nothing about it.

Q. 54. Did he not introduce into the same a liqueur

513

that he prepared and which had nothing of chartreuse but the exterior aspect?

A. I know absolutely nothing about it.

Q. 55. Did not Mr. Boitel maintain that this liqueur had been made by the monks at the monastry?

A. I was not present at the trial, I know nothing about it.

Q. 56. Were you a party to these proceedings?

A. I was represented by an attorney at the proceedings, I do not know exactly what passed. 514

Q. 57. Was there a lease entered into between the Prefect of the Department of the Isère, the Administration of Domains and you?

A. Yes.

Q. 58. On what date?

A. At the commencement of the second half of the year 1904 I believe.

Q. 59. Can you produce this lease?

A. I think I have already produced it in support of an affidavit. 515

Q. 60. To what affidavit do you allude?

A. I do not remember exactly whether it is an affidavit for America or for England.

Q. 61. Could you produce it and hand it to the Commissioner?

A. I do not see any reason for not doing so.

Q. 62. I am going to give you a document, I beg you to examine it and if it is correct I beg that you will hand it on Monday to the Commissioner. Where do you get the necessary plants for the manufacturing 516 of the liqueur?

A. I do not occupy myself with the manufacturing of the liqueur.

Q. 63. Do you know of an article in the "Temps" of the 20th September, 1904?

(The witness takes the newspaper and looks at the article in question. This newspaper is annexed as "Exhibit O.")

517

A. Yes, it is the reproduction of a letter I sent to the "Temps." It is signed by me.

Q. 64. You say in this article that the plants are necessary—the plants of the group of the Grande Chartreuse?

A. I await your question.

Q. 65. On the other hand you tell us that you do not concern yourself with the manufacture. How can you reconcile those two things?

518 A. I said in my letter this: It results from numerous experiments made by the Carthusian Fathers as well as by the judicial verdicts obtained by them that the liqueurs of the Carthusians can only be produced at the Grande Chartreuse; as the Carthusian Fathers have so often declared so forcibly, the plants gathered in that admirable domain take from the soil of the place aromas and qualities which they alone can transmit to chartreuse. I said nothing else.

Q. 66. You tell us in this article—

519

By Mr. Kelly: I did not think that you would go on so long.

By Mr. Bonnet: I have finished, it is my last question.

Q. 66. You said in that article that it results both from documents and from numerous experiments made by the Carthusian Fathers, as well as from the judicial verdicts obtained by them, that the liqueur of the
520 Carthusian Fathers could not be produced except at the Grand Chartreuse. To what judicial verdicts do you allude?

A. They are declarations which were given to me by my attorneys and counsellors at Grenoble.

Q. 67. You cannot give precise details?

A. I do not recollect precisely the judicial verdicts mentioned.

Q. 68. Here is the collection of the judicial verdicts rendered relative to the mark of the Grande Chartreuse, can you show us to what verdicts you wish to make allusion?

521

A. I only know the first of these collections—and I do not know if it contains the decisions given relative to chartreuse.

Mr. Kelly observes that the objections made by him previously do not apply to the present questions.

Q. 69. In any case you cannot tell us the decisions to which you allude in your letter?

522

A. I have not even read that collection, the first.

Q. 70. Then you have not yourself seen the verdicts you aimed at in your letter?

A. I did not allude to verdicts in a precise manner, I alluded to general declarations.

Q. 71. You speak of judicial verdicts. Can you tell us to what judicial verdicts you make allusion?

A. To verdicts that I was told had been given.

Q. 72. Then it is a pure conjecture? Do you know these circulars?

523

A. It is the first time that I have seen them, but I have heard speak of them.

Q. 73. Do you know the signer of these circulars?

A. Mr. Garrett. Yes, he is my agent for England.

Q. 74. In one of these circulars this is said: "As "liquidator of the assets of the Carthusian Fathers "and recognized by the law as sole proprietors" * * * etc. That is the reproduction of the article in the "Temps" to which I alluded just now and which refers to the judicial verdicts of which I spoke. Do you know to what judicial verdicts your agent alluded?

524

A. My agent reproduces the letter in the "Temps" from what I see here, consequently I believe it is a simple reproduction.

Q. 75*a*. Do you know for what purpose this circular was sent?

A. I do not know.

By Mr. Bonnet: Mr. Commissioner, I beg you to attach this circular and the "Temps" newspaper.

525

By Mr. Kelly: I object, the circular having no connection with the case at issue.

Q. 75. Will you allow me a last question? Mr. Lecouturier, here is a document; will you examine it and tell us if it is the copy of letters exchanged with Mr. Cusenier?

By Mr. Kelly: I do not think that Mr. Le-
526 couturier should take notice of these letters.

By Mr. Bonnet: He will do as he likes.

By Mr. Kelly: I shall refuse to accept those letters.

By Mr. Bonnet: All right. I also hand you this document, will you kindly tell me on Monday if it is the exact copy of the contract entered into between you and Mr. Marnier-Lapostolle?

By Mr. Kelly: I make the same observation.
257 The witness is not obliged to accept these documents.

By Mr. Bonnet: I also hand you a document. Will you kindly examine it and see if it is the copy of the agreement entered into between Mr. Cusenier and Mr. Garin, agreement of which you approved?

By Mr. Kelly: I make the same observation.

By Mr. Bonnet: Finally, I hand you this document. Will you kindly examine it and tell
528 me on Monday if it is the judgment confirming or authorizing you to make an agreement with Mr. Marnier-Lapostolle?

A. I refuse to take notice of these documents.

Session terminated at 4.45 p. m.

The cross-examination is adjourned to the next session, fixed for Monday, February 12th, 1906, at 2 o'clock.

529

SESSION OF MONDAY, FEBRUARY 12th, 1906, at 2 P. M.

Present:

FRANK H. MASON, U. S. Consul-General at Paris, France, Commissioner;

MR. J. BONNET, Counsel for the Plaintiffs, assisted by MR. BARBANCEY, private secretary, and MR. BACHRICH, private stenographer;

MR. EDMOND KELLY, Counsel for the Defendants, assisted by MR. PELLERIN, private secretary, and a private stenographer. 530

Mr. G. DUCLOS, official sworn French stenographer.

BY MR. KELLY: Mr. Commissioner, before the arrival of Mr. Lecoutúrier I would ask if you intend to add to the Commission the documents which were produced to the witness at the last sitting and which the witness refused to 531 accept?

BY THE COMMISSIONER: Yes, I think that I must attach them.

BY MR. KELLY: I am formally opposed to those documents being annexed to the Commission because they have not been identified by any witness.

BY THE COMMISSIONER: Yes, they are signed.

BY MR. KELLY: I speak of the last documents. 532

BY THE COMMISSIONER: No.

BY MR. KELLY: You will not annex them to the Commission?

BY THE COMMISSIONER: I have not got them.

BY MR. BONNET: What documents are meant?

BY MR. KELLY: Documents produced to the witness at the last session and which he refused to accept.

BY MR. BONNET: We must understand one another. There are two sorts of documents,

533 there are the contracts and there are the circular and the article in the "Temps." Do you refuse to allow me to put in the article of the "Temps" and the Circular that Mr. Lecouturier recognized as his agent's?

By Mr. Kelly: No, I cannot object to the annexation of documents that Mr. Lecouturier acknowledged.

By the Commissioner: And signed.

534 By Mr. Kelly: And signed, but I am opposed to the addition to the Commission of all documents that Mr. Lecouturier refused even to accept.

Direct Interrogatory Continued by Mr. Bonnet:

Q. 76. Continuing the observation that you have just made, Mr. Kelly, I should like to again put the question to Mr. Lecouturier, so that he may say if he

535 refuses.

By Mr. Kelly: He has already refused.

By Mr. Bonnet: I asked him to take notice of certain documents: they are the contracts entered into between him and Mr. Cusenier, between him and Mr. Marnier-Lapostolle, between Mr. Cusenier and Mr. Garin, this last contract being approved by Mr. Lecouturier. I ask him again if he refuses to take notice of these documents.

536

A. I refer you to my examination the other day and to my reply that I made the other day.

By Mr. Bonnet: Did you hear my question, or shall I repeat it?

(At the request of Mr. Bonnet the stenographer read the preceding question and the reply).

Q. 77. Do you refuse to tell me if these copies conform with the originals?

537

A. I refer you to the reply that I have given.

Q. 78. At your last examination on Saturday last I asked you to let me know the judicial verdicts spoken of in your letter in the "Temps" of the 20th September, 1904. Have you found those judicial verdicts?

A. I own that I have not looked for them or caused them to be looked for, because yesterday was Sunday and I did not think you would put the question to me again to-day.

Q. 79. Have you examined the copy of the lease I 538
handed you on Saturday? Did you find that it agreed with the original?

A. The copy agrees.

Q. 80. Will you please hand it to the Commissioner?

(The copy is handed in, signed by Mr. Leconturier and marked "Exhibit P.")

Q. 81. Finally, one last question. Are you the tenant of the Convent of the Grande Chartreuse? 539

A. I have produced the lease.

Q. 82. You stand to the lease, then?

A. Certainly.

Q. 83. In the lease this is stated: that you are granted the exclusive right of gathering and harvesting aromatic plants both in the fields of the estate of the Grande Chartreuse and in the gardens of the monastry, of the Correrie and of Currieres. Are you the tenant of the monastry of the Grande Chartreuse?

A. I refer you to the lease. 540

Q. 84. You refuse to reply to that question?

A. I have produced a lease which is absolutely exact, I cannot tell you whether I have more rights than the lease gives me or whether I have less.

Q. 85. Are you aware that in the lease there is no mention made of the monastry of the Grande Chartreuse?

A. I refer you to the lease.

By Mr. Bonnet: Thank you.

541

CROSS-INTERROGATORIES BY MR. KELLY:

x-Q. 1. Mr. Lecouturier, have you never personally examined all the jurisprudence that concerns the Chartreuse?

A. Personally I could not do that work, which is a considerable labor.

x-Q. 2. Did you entrust that labor to other people?

A. I entrusted it to different attorneys either for
542 France or for abroad.

x-Q. 3. Have you, since the last session, entrusted this work to one of your Counsel?

A. To search in certain volumes and in the judgments of Grenoble the whole of the decisions.

x-Q. 4. Is this work completed?

A. No, it is considerable labor, and would perhaps require several months.

x-Q. 5. Have you any partial results of this work?

A. Partial? No.

543 x-Q. 6. In short, have your attorneys furnished you with any decisions regarding same?

A. That is to say a search has been made, they read again extremely rapidly the decisions which I chanced to have at home, and we conferred together about the same.

x-Q. 7. Did you find those in support of the letter you wrote to the "Temps" and to which reference was made in question No. 65 at the last session—It is not question 65, it is—it is question 63.

544

(Mr. Kelly at this time holds towards the witness the book open at the place where the decision that is about to be spoken of is reproduced).

A. A decision has already been found which is worded as follows, which was in one of the volumes that has been presented to me:—

"Selection of the jurisprudence relative to the mark

545 "of the liqueur manufactured at the Grande Char-
" treuse, page 303, § 4 :

" Whereas the manufacture of a liqueur does not
" exclusively consists in its distillation but in all the
" primary manipulations, it should be considered that
" the place of manufacture is not only the place where
" it is prepared but likewise the place where the
" plants and juices entering into its composition are
" obtained ;

" That it is certain that the mixture of the different 546
" juices of plants takes place at the Convent of the
" Grande Chartreuse and not at Fourvoirie, where the
" distillery is situated ;

" That in addition the name of Grande Chartreuse
" extends to the different establishments, to the con-
" vent, distillery, hospital and farms which compose
" the property called the Chartreux in the Canton of
" Saint Laurent du Pont."

This is a decision extremely celebrated, a decision that everybody knows at Grenoble, because it is the 547 decision which classed Fourvoirie in the estate of the Grande Chartreuse. Formerly the Carthusians manufactured their liqueur with the plants they got in what they called the Desert, that is to say in the cirque of the Grande Chartreuse. In proportion to the development that the liqueur gained they were obliged to enlarge their factory, and they transferred it, at a time that I cannot give precisely but which it is easy to trace, to the spot that is called Fourvoirie, and which is to be found exactly at one of the en- 548 trances to this desert, which, I have been told, was formerly closed by doors, and it is this decision which everyone cites and everyone knows at Grenoble. There are perhaps others on the question.

x-Q. 8. Do you know if there are any decrees or decisions of the Courts outside of the collection produced to you at the last session, entitled " Selection " from the jurisprudence relative to the mark of the " liqueur made at the Grande Chartreuse " ?

A. I am convinced that all the judgments rendered

549 relating to the mark of Chartreuse are not in this volume. Personally I have had occasion to find under special circumstances, two or three which, I believe, are not there.

x-Q. 9. Do you know under whose care this collection was made ?

A. I think that it is stated that it is an extract from a dictionary, consequently it should contain the principal decisions, but it seems to me that the supplement
550 to this collection, which I have not got but have seen, was made by the Carthusians themselves, because it was done in a printing office which belonged to the Carthusians. The supplemental volume bears as an imprint: Currière, which is a printing office that the Carthusians had themselves and in which the deaf and dumb worked. I consequently believe, without being able to say precisely, that it was the Carthusians who had those decisions published.

x-Q. 10. You say you have found in addition to this
551 selection some jurisprudence of the Grande Chartreuse ?

A. I have found, I fancy I remember three judgments, which I had need to study for the Bonnal affair, and which, from the verification made by my secretaries, were not to be found in the volume.

x-Q. 11. Where did you find them ?

A. At the office of the clerk of the civil or criminal Courts of Grenoble, I do not know exactly which. It was my attorney who made the research.

552 x-Q. 12. Do you remember about what dates ?

A. They are judgments which may go back ten or fifteen years, I would not be able to say precisely. They relate, I believe, to the affairs of Bonnal ; it was in this connection that I had the search made.

x-Q. 13. Will you produce these judgments, if needed ?

A. Certainly.

x-Q. 14. There was produced to you, there was dictated to you a clause of the contract which you

553 made with Mr. Marnier. Will you tell me under what conditions this contract was made?

A. I can tell you without however wishing to divulge anything that I know from the point of view of professional secrecy, for they were after all conversations which took place at my office as the judicial administrator. Mr Marnier came to see me about the month of May, 1905. He was introduced to me by a good friend of mine. At that time I was under contract with Mr. Cusenier. Mr. Marnier told me that the 554 Chartreuse business interested enormously, that he keenly regretted that I had a contract with Mr. Cusenier because he would have been very happy to have assumed the manufacturing and above all the purchase of the Chartreuse. I let him understand that I wished to have for the Chartreuse mark a price of five million francs, and the price did not seem to be an exaggerated one to Mr. Marnier. There were several interviews, and it was following these interviews that I brought in a petition for cancellation 555 against Mr. Cusenier, so as to be able to be free if needed. Mr. Marnier signed an agreement one day to assure the agreed price of five millions, and we made afterwards a contract, in the following month of September, after very, very long negotiations. Mr. Marnier had told me that he agreed to make the chartreuse better perhaps than even the Carthusians themselves. I took information about Mr. Marnier, whose reputation as a merchant and manufacturer is known in Paris, and knowing that I had to do with a 556 first class manufacturer I was very much inclined to make the contract with him, more so as he assured me a considerable profit, as Mr. Cusenier guaranteed only 1,500,000 francs whereas Mr. Marnier offered five million francs. It was under these conditions that I negotiated with Mr. Marnier-Lapostolle, and I regret that he was not able to keep to his agreement.

x-Q. 15. Did Mr. Marnier explain to you in what way he could improve the liqueur, that is to say in

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what way he could make it superior to the liqueur that the Carthusian Fathers had made?

A. Mr. Marnier told me in the first place that he was a first class distiller, that he consequently was specially competent, and that above all—and that is what we aimed at in the contract—that he would only use the raw material that the Carthusian Fathers had used. It is of public notoriety, at least during the last years, that the Carthusians made their liqueur by
558 using alcohol from the South of France, of the trois-six distilled on their behalf in certain distilleries, which I traced and with which the firm of Cusenier has been in relations. Mr. Marnier-Lapostolle declared to me that he would use as the primary material —I do not know if it was for the whole, it was for a part—liqueur brandies from Charante which was considerably more expensive. Moreover Mr. Marnier pointed out to me that selling at the very time a liqueur of which the sale price was higher than that of
559 Chartreuse, he was in a better position than any one else to know how to sell a liqueur of great luxury, among which it was necessary to class Chartreuse, and that consequently he was quite able to have a much greater scope for the mark and to put it on its feet again, for I considered at that time that the firm of Cusenier had not done the necessary advertising to assure a very large sale.

x-Q. 16. Do you know the Boitel imitation, to which Mr. Riviere, of London, referred in his testimony?

560 A. I participated. I was informed of the imitation by Boitel as soon as it was discovered by the firm of Martel & Hennessy, and my solicitor in London asked me to share in the expenses of bringing an action against Boitel, up to £50, and I agreed to participate for £25.

x-Q. 17. And you intervened in the action?

A. I think that my solicitor intervened, but I am not able to say precisely, for I do not know the English procedure. I commissioned him to do what was necessary and I think I understand from his correspond-

561

ence that he intervened, for he told me that my participation was necessary to show that I intended to prosecute the counterfeiters in England. But I do not know exactly what he did.

x-Q. 18. Have you heard speak of an imitation by Green?

A. I have never been told of the Green imitation.

x-Q. 19. In your capacity as Liquidator are you at the present time the receiver of the estate of the Carthusians? 562

A. By the law of the 1st of July, 1901, I am the receiver of the whole of the estate of the Congregation of the Carthusians.

x-Q. 20. Do you claim the trade mark?

A. I claimed the trade mark by an action which was tried in the first instance and on appeal, and is at the present time submitted to the highest Court of Appeal (Court of "Cassation.")

x-Q. 21. This judgment is executory in France? 563

A. Judgments are executory, as the appeal for the reversal of judgment, in French law, does not prevent the judgment being executory.

x-Q. 22. Have you claimed the property of the mark abroad?

A. I have also claimed the property of the mark abroad.

x-Q. 23. Principally in London?

A. Principally in England, where the marks have been moreover transferred to my advantage. 564

x-Q. 24. Will you explain to me—

MR. BONNET: I raise an objection, different questions put by Mr. Kelly in no way corresponding to the interrogatories I put to the witness.

x-Q. 24. Will you explain to me the proceeding which took place in England?

A. In England I demanded, about the month of Au-

565 gust or September, 1904, that the marks registered in the name of Abbot Rey should be transferred to me, and a decision was made at the Patent Office which transferred the marks to me.

x-Q. 25. Have you claimed the marks anywhere else abroad?

A. I claimed the marks in Germany, where I duly made a similar demand, only I think I remember that the German "Patentant" replied that my request was
566 not receivable until the French judgments had become definite. I also made demands in several other countries of the world.

By Mr. Bonnet: I raise an objection to the question now being put to the witness, who is our witness, and who can only be questioned on the interrogatories which I put to him.

x-Q. 26. Have you had the marks claimed in the
567 Argentine Republic?

A. I have had the marks claimed also in the Argentine Republic, and we have had several actions.

x-Q. 27. Who did you find opposed to you in the Argentine Republic, as Defendant, when you asked for the property of the mark?

A. I believe I remember and am able to assure that it was Father Rey who pleaded against me in the Argentine Republic; it was certainly he.

x-Q. 28. And in whose name was the mark in Eng-
568 land?

A. In England the mark was in the name of Father Rey.

x-Q. 29. And in Germany?

A. In Germany also in the name of Father Rey. I believe there is one country where he forgot to have the cession transferred from Grésier to Rey, but I could not affirm it. I have no remembrance of it now.

569

RE-DIRECT INTERROGATORIES BY MR. BONNET:

Re-d. Q. 1. You said a while ago, when I examined you, that you did not know, that you could not recall to memory the awards which justified your letters to the "Temps." You quoted afterwards a decision, your memory refreshed, and you quoted a decision of the Court of Grenoble of the 1st August, 1885. Here is a passage from your article in the "Temps" of your letter in the "Temps": 570

"There results as much from the numerous experi-
" ments made by the Carthusian Fathers as from the
" judicial verdicts obtained by them that the liqueur of
" the Carthusians can only be produced at the Grande
" Chartreuse. As the Carthusian Fathers have affirmed
" so often so forcibly, the plants gathered on this ad-
" mirable estate borrow from the soil aroma and quali-
" ties which they alone can give to chartreuse." Will you please tell me in which passage of the decision of the 1st August, 1885, which you quoted a while ago, is 571 the phrase to be found authorizing this passage of the letter which I have just read?

A. I have just read myself the passage in which it is said that the plants and juices are gathered at the Grande Chartreuse.

Re-d. Q. 2. This is the passage you have read:
" Seeing that the manufacture of a liqueur not con-
" sisting exclusively in its distillation but by the first
" manipulations, it should be considered that the place
" of manufacturing is not alone the place where it is 572
" prepared but likewise the place where the plants
" and sugars entering into its composition are ob-
" tained;

" That it is certain that the mixture of the different
" juices of plants takes place at the Convent of the
" Grande Chartreuse, and not at Fourvoirie, where the
" distillery is situated only."

Is it alone on this passage you relied?

A. Yes.

573 Re-d. Q. 3. Are there not any other passages ?

A. Oh, I will say that I read the decision very rapidly ; there may be other passages, I do not recall them to memory. It is a labor which I am having done. That is why, a while ago, as I did not have but one decision, I did not wish to speak to you about it.

Re-d. Q. 4. A while ago, analysing a passage from the contract drawn up between Mr. Marnier-Lapostolle and you, you told us that Mr. Marnier had undertaken
574 to use raw materials which the Carthusians did not use. Did the Carthusians use alcohol for the making of the liquors ?

A. Alcohol ? What do you understand by that ?

Re-d. Q. 5. Alcohol—alcohol is a chemical product that everybody knows. Did they use alcohol, brandy ?

A. Those things are absolutely outside of my province, I do not want to say anthing stupid. I believe that the Carthusians used—because I have had a proof of it—what is called trois-six of wine.

575 Re-d. Q. 6. In the contract entered into with Mr. Marnier this is stated :

" Consequently, Mr. Marnier-Lapostolle undertakes " to pay over to the Liquidator a royalty reduced to " 16% on the net receipts, on account of an increase " in the cost price which is caused by the nature and " the excellency of the first materials."

Will you explain to me what this passage signifies. In the first place the excellence of the first materials ; were the first materials the same as those—

576 A. I can only refer to the answer I gave a while ago because I am not a distiller. We wished to put into the contract that the cost price of the manufacturing by Mr. Marnier-Lapostolle should be higher, and a reduction would be made to him on the royalty that he had to pay. That is all that we wished to put.

Re-d. Q. 7. You declared a while ago that Mr. Marnier-Lapostolle had undertaken to employ first materials that the Carthusians did not employ. What do you mean by that ?

A. No, I meant to say this : I say that, from what I

577

believe, the Carthusian Fathers only used the trois six of wine from the South of France, and that Mr. Marnier-Lapostolle had the intention to use fine brandies from the Charente.

Re-d. Q. 8. But the trois six from the South of France and the fine brandies of the Charente, are they not products of the same nature ?

A. That is not all my trade, I could not tell you.

Re-d. Q. 9. You drew up a contract evidently know the conditions, knowing what you signed. When it is 578
said that products of a different nature are used what does one understand ?

A. I have just explained to you the manner in which I understood the contract. It may be that it was badly drawn up, according to you.

Re-d. Q. 10. You declared to us a while ago that you had requested of the Tribunal and of the Court of Grenoble to accord to you the property of the marks abroad ; has this property been given to you by the decision of the Court of Grenoble ? 579

A. In my opinion the property of the marks has been given to me, only as the judgment did not appear to me sufficiently clear, that there may be no point for litigation, I have myself brought forward a request for a ruling, and it is a case that should be pleaded shortly.

Re-d. Q. 11. When you had the mark of Father Rey transferred in England did you not produce a decree from the President of the Court of Grenoble, of the 15th February, 1905 ? 580

A. I do not remember exactly on what date the transfer was granted. My request for transfer if previous to the decree ; if the transfer was later than the decreed order I certainly produced it, for I sent all my documents to my solicitor in England and as soon as the decree of the 15th of February was granted I also sent it to London.

Re-d. Q.12. Was not your request specially based upon this decree of the 15th February, 1905 ?

A. It seems to me that I can affirm the contrary, for

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my request must have been in October, 1904, and consequently it was not based on the decree of the 15th February, 1905.

Re-d. Q. 13. Did not the production of the decree precede by several days the decision of the Commissioner of the Patent Office?

A. I do not know; I do not remember the date of the decision of the Patent Office nor the date on which the deposit of the decree was made; it is easily
582 found.

Re-d. Q. 14. Did not a decision of the Court of Grenoble annul this decree?

A. A decision of the Court of Grenoble of the 12th of December, I think, decided that the decree had been rendered by the President beyond his jurisdiction, and set aside the same simply for a flaw in the form.

Re-d. Q. 15. You declared a while ago that the Patentant of Berlin had rendered a decision by the
583 terms of which it intended to suspend the transfer of the mark of Father Rey to you until a decision of the French Courts, a definite decision, was arrived at. Are you certain of that?

A. Oh, not in the least. In the first place I do not think that I declared that a decision was arrived at; I simply said that I had placed this request before the Patentant, and that the Patentant had declared—and I think that it all passed verbally between my agent for Germany and the representatives of the
584 Patentant, but I am not sure, as I was only informed of it by correspondence from my lawyer in Berlin.

Re-d. Q. 16. Was not the decision of the Patentant notified to you?

A. I dare not affirm it, for it may be that I have not personally seen all the documents which have come to my place.

Re-d. Q. 17. You have told us that you requested in the Argentine Republic that the marks be transferred to you. Has a decision been rendered; a decision of the Argentine Courts?

585

A. There is a decision from the Judge of First Instance of Buenos-Aires, who has, I believe, given a ruling to my opposition, I believe, to the transfer or rather to the application for registration that Father Rey had made for two new marks, but I would not be able to exactly affirm on what question the Judge of the Argentine Republic decided, because I have had three or four actions in the Argentine Republic and I would not like to make an error. I believe that the Argentine Republic judge decided that my opposition 586
to the application for registration of a mark by Father Rey was neither receivable nor founded.

Re-d. Q. 18. Have you not requested—I am trying to refresh your memory—have you not notably requested the execution in the Argentine Republic of verdicts of the French Courts?

A. I cannot tell you exactly what procedure has been followed by my lawyer at Buenos-Aires; I sent him all the documents and instructed him to do for the best; I can not state precisely what he did or what 587
he did not do?

Re-d. Q. 19. The judge in the Argentine Republic, did he not throw out your pretention. Have you in your hands the verdict which was rendered?

A. I have had the judgment, but it is in Spanish.

RE-CROSS-INTERROGATORIES BY MR. KELLY:

Re-x-Q. 1. Can you tell me how many trials you have in France and abroad concerning the mark of the 588
Grande Chartreuse—concerning the estate of the Carthusians?

A. I would not be able to tell you that for certain; I have more than two or three hundred.

Re-x-Q. 2. More than 200 or 300?

A. Yes.

Re-x-Q. 3. Are you the Liquidator of other Orders besides the Carthusian Fathers?

A. Most certainly.

589

Re-x-Q. 4. Of how many orders are you the Liquidator?

A. I have not counted them; I have forty, or perhaps fifty of them.

Re-x-Q. 5. Forty or fifty?

A. Yes.

Re-x-Q. 6. Under those conditions have you a personal knowledge of all the correspondence and of all that is taking place concerning the 40 or 50 Orders of
590 which you are the Liquidator, and of the 200 or 300 cases you have had for the Carthusians alone?

A. I would like to have knowledge of same, but that is impossible for me, I am obliged to have assistance.

SESSION OF MONDAY, February 12th, 1906, } Continued. }

591

OCTAVE NOVEL, attorney-at-law, of Grenoble, France, temporarily sojourning in Paris, a witness of lawful age, having been produced, sworn and examined on behalf of the Plaintiff, doth depose and say as follows:

DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiff:

Q. 1. Will you give me your name?

592 A. Novel, Octave.

Q. 2. Your profession?

A. Counsellor at law, before the Court of Grenoble.

BY MR. KELLY: At this point I oppose all testimony given by an attorney, who should not —who is bound by professional secrecy.

BY MR. BONNET: The attorney is in no way bound, under the circumstances, by professional secrecy, in the first place because he is going to testify about matters to which he was not a

593

party, and in the second place should he testify concerning matters to which he was a party he has been relieved of professional secrecy by his clients.

By Mr. Kelly: I maintain my objection.

Q. 3. Do you know the Liquidator of the estate of the Carthusian Fathers?

A. Yes.

Q. 4. Do you know to whom the Liquidator en- 594
trusted the manufactory?

A. To Mr. Cusenier, spirit distiller at Paris.

Q. 5. Do you know or do you not know whether any difficulties cropped up between the Liquidator and Mr. Cusenier?

A. Yes, I know that three proceedings have existed between Mr. Lecouturier and Mr. Cusenier.

Q. 6. How is it you had knowledge of these pro-
ceedings?

A. I know of them by the placets which I have seen 595
on the rolls which were filed for bringing action—at the time bringing action in these matters.

Q. 7. For the edification of the Court of New York, will you please explain to me what is a "placet" in the legal term?

A. A placet is a note drawn up by the attorney of the plaintiff and filed by him with the Clerk of the Court, intended to be used in entering the case and to have it brought before the Court.

Q. 8. What does the placet contain in a general 596
way?

A. The placet contains the names of the parties, their demands and the object of the proceedings.

Q. 9. Can the public take note of the placet?

A. Oh, yes, it is public.

Q. 10. Can you, in the event of the Court of New York requiring same, remit the copy of the placets drawn up in the proceedings of Mr. Lecouturier against Cusenier or Cusenier against Lecouturier?

A. Oh, yes.

597

Q. 11. Did the Liquidator entrust the manufactory to another spirit distiller?

A. Yes, to Mr. Marnier-Lapostolle, spirit distiller in Paris.

Q. 12. How do you know that?

A. I also know it from the proceedings which exist between Mr. Lecouturier and Mr. Marnier-Lapostolle, and by a judgment to a demand rendered by the Court, which authorized Mr. Lecouturier to treat with Mr.
598 Cusenier and with Mr. Marnier-Lapostolle.

Q. 13. Did the judgment authorize Mr. Lecouturier to treat with Mr. Cusenier?

A. To come to an agreement.

Q. 14. The judgment authorised Mr. Lecouturier to treat with who, then?

A. With Mr. Marnier-Lapostolle.

Q. 15. Could you, if it should be needed, at the request of the Court of New York, produce a true copy of this judgment.

599 A. Yes.

Q. 16. Do you know if this contract was executed.

A. It has not been executed, as proceedings were begun between Mr. Lecouturier and Mr. Marnier-Lapostolle.

Q. 17. Do you know before which Court these proceedings took place?

A. Before the Civil Court of Grenoble.

Q. 18. How did you have knowledge of these facts?

A. From the placets which I have seen in the office
600 of the Clerk of this Court.

Q. 19. Are you, or are you not, the attorney for the Carthusian Fathers?

A. I am not the attorney for the Carthusian Fathers.

Q. 20. Are you the attorney for the Union Agricola?

A. Yes.

Q. 21. Do you know what is the Union Agricola?

A. The Union Agricola is a company selling the products manufactured by the Carthusian Fathers.

Q. 22. Have you had to represent the Union Agricola in any proceedings?

601

A. I have represented it at two proceedings.

Q. 23. To what did the first of these proceedings relate?

A. The first case was relating to an action for counterfeiting brought by Mr. Lecouturier against the Union Agricola.

Q. 24. An action for counterfeiting what?

A. Counterfeiting the mark.

Q. 25. What did the verdict decide?

A. The verdict decided that there was no counter- 602
feiting of the mark and that the Carthusian Fathers retained the possession of their process of manufacturing.

Q. 26. Have you the verdict?

A. I have the verdict.

Q. 27. Can you produce it?

A. Yes.

BY THE COMMISSIONER: Will you sign it with the date. 603

(The Witness produces and signs the verdict, and it is marked "Exhibit S.")

Q. 28. For what was the second action brought?

A. The second case was an action brought by the Union Agricola against a newspaper published at Grenoble under the title of "Dépêche Dauphinoise."

Q. 29. And why was this action brought?

A. This action was brought because of an incomplete or erroneous analysis, an erroneous analysis of the 604
judgment rendered by the Court of the 18th of May, 1905, which had decided that there was not a counterfeiting of mark.

Q. 30. The judgment only decided—only determined as to the counterfeiting of the mark?

BY MR. KELLY: What is the judgment? Between which parties?

BY MR. BONNET: Of the 18th of May, between Mr. Lecouturier and the Union Agricola.

605

Q. 30*a*. This judgment had simply decided that there was no counterfeiting of the trade mark?

A. This judgment had decided that there was no counterfeiting, and, moreover, decided that the Carthusian Fathers had remained in possession of their processes of manufacturing.

Q. 31. Have you the newspaper report?

A. I have it.

Q. 32. Can you produce it?

606 A. I am going to produce it.

[Marked as "Exhibit T."]

By Mr. Kelly: I make an objection as not being the best proof. Newspaper articles cannot be produced as proof of a judgment

Q. 33. That which you hand to the Commissioner is correct: the part of the issue of the "Dépêche Dauphinoise" which occasioned the action of which we are

607 speaking?

A. Yes, I affirm it.

Q. 34. Of what did the Union Agricola complain in this report?

A. The Union Agricola complained that this report was an erroneous analysis in such a way that the newspaper pretended that the Carthusian Fathers being no longer situated in the group of the Chartreuse could no longer manufacture, not having the necessary plants which grew in the group.

608 Q. 35. How were the criticisms of the Union Agricola presented?

A. They were presented in the form of a letter from the President of the administration.

Q. 36. To whom was the letter addressed?

A. To the editor in chief of the newspaper.

Q. 37. How do you know of this letter?

A. I know it because Mr. Daumas de Foxa came to consult me at the time of the publication of the article, at the time of the writing of this letter.

Q. 38. Who is Mr. Daumas de Foxa?

609

A. Mr. Daumas de Foxa is the President of the Board of Directors of the Union Agricola.

Q. 39. What attention was given to this letter?

A. The letter was published, but in a partial manner, and notably an interesting point was omitted by the newspaper.

MR. KELLY: I beg your pardon, perhaps I am in error. Does the newspaper article contain the letter?

610

MR. BONNET: No.

(Mr. Kelly requests the stenographer to read question No. 35.)

BY MR. KELLY: Criticisms of what?

BY MR. BONNET: It is necessary to follow all the questions. It is for having published an incomplete account. The complaints of the Union Agricola were based on the fact that the "Dépêche Dauphinoise" had given an incomplete report of the judgment, and inexact, of the judgment of 18th May, 1905.

611

BY MR. KELLY: Therefore I simply wish to enter an objection to any question on the subject of the complaint of the Union Agricola, as being irrelevant.

Q. 40. What happened after this incomplete reproduction of the letter from the President of the Union Agricola?

A. The Union Agricola then brought an action against the newspaper, the "Dépêche Dauphinoise," which was condemned to insert in a complete form the letter of Mr. Daumas de Foxa.

612

Q. 41. Have you this judgment?

A. I have this judgment.

Q. 42. Will you produce it?

A. I am going to produce it.

BY MR. KELLY: I make an objection as being irrelevant to the cause now pending.

(The witness produces and signs the judgment, and it is marked "Exhibit U").

613

Q. 43. Is it a copy or an authentic duplicate of the record which you have handed the Commissioner ?

A. It is a duplicate of the record.

Q. 44. Issued by whom ?

A. Issued by the Clerk of the Court of Grenoble.

CROSS-INTERROGATORIES BY MR. KELLY, representing the Defendant.

614 x-Q. 1. You have said, I think, that the placets are public, open to the public ?

A. Yes.

x-Q. 2. You mean to say that any body can go and see the placets ?

A. Yes.

x-Q. 3. Are you sure of that ?

A. Yes, sir.

x-Q. 4. What! you mean to say that no matter who it is can go to the Clerk of the Court, can go and ask
615 to see the placets, that the Clerk of the Court will hand them to him ?

A. Yes.

x-Q. 5. Really. For whom are they drawn up, the placets ?

A. For the public.

x-Q. 6. For the public ? Oh! You are an attorney, are you not ?

A. Yes.

x-Q. 7. You know better than that, do you not?
616 Tell me, I beg of you, for whom is the *placet* drawn up ?

A. It is drawn up for the Clerk of the Court, and all acts deposited with the Clerk of the Court are public.

x-Q. 8. Is the placet drawn up for the Clerk of the Court ?

A. It is drawn up for the President of the Court.

x-Q. 9. Ah! It is drawn up for the President of the Court and not for the public at all ?

A. It is read over at the public sitting.

x-Q. 10. I ask you if the placet is drawn up for the public or for the President of the Court ?

617

A. It is drawn up for the President of the Court.

x-Q. 11. Very well, it is in your capacity of an attorney that you have had access to these placets?

A. Yes.

x-Q. 12. Shall I say by indiscretion of the Clerk of the Court?

A. No.

x-Q. 13. You mean to say that any attorney can go and ask the Clerk of the Court to have access to all the placets?

618

A. They are read at the public sitting and we have the right—

x-Q. 14. What is read at the public sitting?

A. The placets.

x-Q. 15. How much of the placets? The names of the parties, is it not?

A. The names of the parties.

x-Q. 16. Is the pleading read over at this time?

A. No.

x-Q. 17. No. You are an attorney at Grenoble, are you not? 619

A. Yes.

x-Q. 18. The Union Agricola is a Spanish Company, is it not?

A. Yes.

x-Q. 19. How is it you had the Union Agricola as a client?

A. I am unable to reply to that question.

x-Q. 20. You do not want to reply?

A. I cannot reply. 620

x-Q. 21. It was by the Carthusians that you were brought together, was it not?

A. I have told you that I could not reply.

By Mr. Bonnet: I object.

x-Q. 22. You refuse to state whether the Carthusians brought you in contact with the Union Agricola. Do you know whether there are any Carthusians shareholders in the Union Agricola Company?

621

A. I do not know.

x-Q. 23. You are sure that you do not know?

A. I do not know.

x-Q. 24. Have you not had the deed which was drawn up between the Carthusians and the Union?

A. No.

x-Q. 25. You have never had it in your hands?

A. Never.

x-Q. 26. And in spite of that you are the attorney
622 of the Union Agricola?

A. Yes.

x-Q. 27. Have you the statutes of the Union Agricola?

A. No.

x-Q. 28. Who is Mr. Daumas de Foxa?

A. President of the Board of Directors.

x-Q. 29. What was he before being the President of the Board of Directors of the Union Agricola?

A. I know nothing about it.

623 x-Q. 30. You do not know that he was the agent of the Carthusians in Spain?

A. Not at all.

x-Q. 31. Do you know Mr. Morin?

A. Mr. Morin?

x-Q. 32. Mr. Morin?

A. Oh, yes.

x-Q. 33. He is counsel for the Carthusians at Grenoble?

A. Yes.

624 x-Q. 34. Are you related to Mr. Morin?

A. I am his nephew.

By Mr. Bonnet: I make an objection; this has nothing to do with the question.

625

SESSION OF WEDNESDAY. February 14th, 1906, at 2 P. M.

Present :

FRANK H. MASON, U. S. Consul-General at Paris, France, Commissioner ;

J. BONNET, Counsel for the Plaintiff, assisted by MR. BARBANCEY, private secretary, Mr. Pillet, and Mr. Bachrich, private stenographer ;

626

E. KELLY, Counsel for the Defendant, assisted by MR. LECOUTURIER, liquidator, MR. ROCQUES, expert, MR. PELLERIN, private secretary, and by a private stenographer ;

G. DUCLOS, official sworn French stenographer.

HENRI MASSIGNON, chemical engineer, of Marseilles, France, temporarily sojourning in Paris, France, aged sixty-four years, having been produced, sworn and examined on behalf of the Plaintiff, doth depose and say as follows : 627

DIRECT INTERROGATORIES BY MR. J. BONNET :

BY MR. BONNET : (to Mr. Kelly) Will you please come nearer, the witness is a little hard of hearing.

Q. 1. Will you give me your name and your christian names ? 628

A. Henri Massignon.

Q. 2. Your profession ?

A. Engineer-chemist.

Q. 3. Your age ?

A. Sixty-four years.

Q. 4. Your residence ?

A. Marseilles, at the present time.

Q. 5. You are a specialist in chemistry ?

A. I am a specialist since 1866 on the question of flavours ; in 1866 I realized a process for extracting

629 scents, flavors by paraffine and mineral oils. After, since that, I have specially occupied myself about the question of volatile dissolvents ; after a certain time in research I was able to adapt this process for industrial purposes, and after having patented it, I founded in 1882-1883, the Société des Parfums Naturels of Cannes. This Company worked these processes up till 1894, at which time it transferred them to the firm of Antoine Chéris, of Grasse. This firm greatly
630 developed these processes, and since, the patents having become public property, these processes are used by all the manufacturers of Grasse and the region of the Maritime Alpes. I have also specially occupied myself in adapting for industrial purposes a process of distilling essences by water.

Q. 6. Have you written any special works on these matters.

A. I have collaborated with Mr. Grimaux in Wurtz's Dictionary of Chemistry, on essences and essential
631 oils.

Q. 7. Who was Mr. Grimaux ?

A. Mr. Grimaux was the professor of the Institute.

Q. 8. What did he teach ?

A. He was lecturer on chemistry.

Q. 9. What were the subjects you treated in the Dictionary of Wurtz ?

A. Essences or essential oils.

Q. 10. Have you collaborated in any other works ?

A. I corrected the " Chimie des Parfums " of Piesse,
632 published by J. B. Bayer. Since then I have abstained from any publications : the processes I had patented, being worked by a Company, I was no longer the owner, and consequently I could not divulge them.

Q. 11. What are the primary ingredients which enter into the composition of liqueurs ?

A. In the manufacturing of liqueurs, generally, there are used alcohol, sugar, flavors, and perhaps some other products, coloring matters.

Q. 12. Can you indicate to me the classical method

633

that is used to extract the flavors or essential oils from plants?

A. There are three methods for extracting the flavors from plants: First, the method of alcoholate by heat, in which the plant is distilled by heat with alcohol: it is the product of the distillation called *alcoholate* which is used. Then a second method is the *alcoholates* or tinctures when cold. The plants are put with alcohol, for maceration, during a certain time, they are allowed to remain a given time and are then 634 drawn off and you have a tincture, a cold *alcoholate*, which contains not only the flavor but also the coloring matters and some other products extracted from the plants. Lastly, the method of distilling by steam. By this method the plant is distilled by water: they are put in a boiler, distilled, and you have at the same time distilled water and essence. If the essence is lighter than the water, it floats on the top; if it is heavier, it goes to the bottom of the water.

Q. 13. Will you give me some explanations regarding 635 the process of cold infusion. When you proceed with the method of cold infusion, what do you obtain?

A. I obtain a product which contains alcohol, at least of the flavor, coloring matters and some fixed products.

Q. 14. Is it necessary that the plant should be dry or fresh in order to extract this coloring matter?

A. It can be extracted in two ways, but for practical purposes it is always extracted from dry plants, because if this precaution was not taken you would have 636 alcoholates which would be much too weak, and which would not keep.

Q. 15. Why would the alcoholates be much weaker?

A. On account of the quantity of water contained in the damp plant. Plants contain considerable quantities, 75% of water; you would therefore get a tincture much too weak.

Q. 16. Will you please explain to me what is a simple alcoholate?

637

A. Simple alcoholate is the result of the distilling of a single plant with alcohol.

Q. 17. And a compound alcoholate?

A. A compound alcoholate is the product of two or several plants distilled in alcohol.

Q. 18. Does the richness of the plants in essence vary from year to year?

A. Yes, it varies every year in proportions more or less large, but it varies every year.

638 Q. 19. Is it possible, however, to have simple alcholate containing the same quantity of essence whatever the richness of the plant in essence may be?

A. Yes, the thing is quite possible, by being careful to proportion the quantity of essence contained in the plant that is to be used. By always using a proportional quantity to that which was used in the original type you can then succeed in reproducing exactly the original type by utilizing a sufficient quantity of plants proportionally to the richness of the plant in essence

639 each year.

Q. 20. The quantity of essence in the plant having been determined can alcohols of a, so to say, definite type be obtained in any way, always having the same contents in essence?

By Mr. Kelly: Objection, as leading.

By Mr. Bonnet: The interrogatory is not leading, for it is impossible in French to translate in any other way the question which I have

640 just put.

A. Yes, if it can be done, if care is taken to put a sufficient quantity of plants.

Q. 21. The preliminary analysis of the plant is necessary?

A. Yes, it is always necessary.

Q. 22. Is it possible to have a liqueur containing a definite quantity of essence, no matter what the richness of the plant in essence may be?

641

A. Yes, if care is taken to proportion the plants, as I have just said, it can always be done.

Q. 23. Can the blending of essences be analyzed ?

A. No, the thing is impossible.

Q. 24. What can be done in the present state of science ?

A. In the present state of science for a given liqueur, the quantity of alcohol, the quantity of sugar and the combined quantity of essences, of perfumes contained in this liqueur can be traced, but it is not possible to 642 separate them.

Q. 25. Are the essences single bodies ?

A. No, they are complex bodies.

Q. 26. What do you understand by the word " complex " ?

A. An essence or an essential oil has not a determinated chemical function, like, for instance, sulphate of soda or chloride of calcium ; it is composed of several different chemical products, such as aldehyde, cetones, phenols, terpens, in variable proportions. There may 643 be two, three or several in the same essence. These bodies have different boiling points, in such a way that the elements of the essences separate at different temperatures. The same essence has different boiling points and the elements separate from one another at different temperatures.

Q. 27. When you are dealing with a mixture of essences having the same boiling points, is it possible to separate them ?

A. No, it is not possible, as they have the same 644 boiling points.

Q. 28. When you are dealing with a mixture of essences having different boiling points, is it possible to separate them ?

A. No, because when you distil fractionally there will come out at a given temperature the body that boils at this temperature. This body may be at the the same time in one or several of the essences. For instance citral. At this temperature the citral of all

645 the essences, retained in each of the essences, will come out, consequently it would not be possible to say that the citral obtained belonged to such and such of the mixture of essences.

Q. 29. As the fractional distilling does not permit the essences to be separated, do not any other chemical methods exist ?

A. No, such do not exist, and they do not exist because there is no reagent known for determining
646 essences such as there is for mineral matters.

Q. 30. Do you know what is chartreuse ?

A. Yes.

Q. 31. Have you studied it from a chemical point of view ?

A. I have studied it for my personal studies.

Q. 32. In your opinion, of what is chartreuse constituted ?

A. Chartreuse is constituted, like all liqueurs, of a mixture of alcohol, sugar flavors, coloring matters and
647 perhaps a few other bodies.

Q. 33. In the present state of science, is it possible to decide qualitatively and quantitatively the essences composing chartreuse, and to synthetically reproduce it as a consequence of this analysis ?

A. No, for the reasons which I have previously given, it is not possible.

Q. 34. Is it possible to proportionate some of the elements of chartreuse ?

A. Yes, it is possible to proportion the alcohol, it is
648 possible to proportion the sugar, it is possible to proportion the bulk quantity of flavors and essences but it is not possible to say what are the essences contained in this bulk element.

Q. 35. Is it possible to determine the nature of the sugar used ?

A. Yes, it is possible to determine the nature of the sugar used, but one cannot tell for instance whether it is cane sugar or beet sugar.

Q. 36. Is it possible to isolate each essence composing chartreuse ?

649

A. No, for the reasons which I have previously given it is not possible.

Q. 37. Do you know the work of Duplais: "Traité de la Fabrication des Liqueurs." (Treatise of the manufacturing of liqueurs)?

A. Yes.

Q. 38. Do you know a formula for chartreuse which Duplais gives?

A. Yes.

Q. 39. Here it is: (Mr. Bonnet presents the book to 650
the witness). Supposing that you are given a chartreuse manufactured according to this formula and that you were ignorant of such formula. Would it be possible to determine the quality and quantity of the bodies, the essences composing this chartreuse in such a manner as to render it possible to reconstitute it synthetically?

A. No, this is impossible; as I have stated before the essences are composed of different bodies. If I
take—Here, for instance, I see China cinnamon and 651
cloves. These two essences contain eugenol and the result is, therefore, that when fractional distillation is done, the eugenol of the China cinnamon and of the cloves will come out at the same time, and it will be impossible to tell the quantity which comes from the China cinnamon and the quantity coming from the essence of cloves.

Q. 40. Do you know this small opuscule of Mr. Charles Girard, director of the Municipal Laboratory?

A. Yes. 652

Q. 41. "Liqueurs. Composition of the principal brands of liqueurs." In this opuscule is found a formula of a kind of chartreuse. With reference to this kind I put the same question to you. If you were given a liqueur made from this formula, is it possible, considering the present status of science, and ignoring the formula, to determine qualitatively and quantitatively the essences which compose the same, in order to reconstitute this chartreuse synthetically?

A. No, for the same reason as explained before. I

653 notice—Mint contains terpene, coriander contains terpene,—eugenol, I have already told you—there is citral in balm-mint. I do not see any others there, but still—Terpenes, terpenes, here are three terpenes, in the mint, in the wormwood and in the coriander,—and in the angelica. Likewise there are common cetones in the mint and the wormwood and therefore it would not be possible to separate the same in this case any more than in the preceding one.

654 Cross-Interrogatories by Mr. Edmond Kelly, representing the Defendants:

x-Q. 1. From a chemical point of view, do certain plants from certain regions produce perfumes or an odour or flavor different to those of the same plant which grow in other regions?

A. From a chemical point of view?

x-Q. 2. Yes, the flavor perhaps is the same, pro-
655 duced in the same regions?

A. No, they resemble one another, but there may be some little differences.

x-Q. 3. Is the difference sometimes considerable?

A. Oh, never.

x-Q. 4. You manufacture, I think, perfumes.. Have you manufactured perfumes?

A. I have manufactured same for 25 years.

x-Q. 5. At Grasse?

A. At Cannes.

656 x-Q. 6. Did you not choose this spot precisely because of the plants you gathered there?

A. Oh, no, all perfumes resemble one another; all places where flowers are produced give the same perfumes.

x-Q. 7. Is it to your knowledge that the essence of the geranium of Provence is superior to the essence of the geranium of Spain or of Algeria, although they are always the same geranium, from a botanical point of view, which produce the essence?

657

A. Commercially some importance is attached to that, a certain importance ; that depends on the uses for which it is intended.

x-Q. 8. But from a chemical point of view ?

A. From a chemical point of view I do not know of any.

x-Q. 9. Do you know if the essence of lavender of France is superior to the essence made from lavender gathered in England ?

A. No, generally that of England is esteemed the 658 most.

x-Q. 10. You esteem more that from England ?

A. It is esteemed in business.

x-Q. 11. Is it to your knowledge that the essence of the geranium of Provence and the essences of lavender of France are sold for industrial purposes at a higher price than the same essences originating from the same plants grown in another region ?

A. Yes, for essence of geranium it is correct ; for the essence of lavender, it is the English lavender which is 659 always the dearest.

x-Q. 12. Is it to your knowledge that the question of latitude and of climate is important for the ageing of wine, alcohols and of perfumed alcoholates ?

A. One is generally of the opinion that heat assists the ageing of products.

x-Q. 13. Does the perfume extracted from a fresh plant differ from that extracted from a dry plant ?

A. No, it is the same.

660

x-Q. 14. In no wise ?

A. In no wise.

x-Q. 15. Is there a difference of fineness ?

A. No, there is no difference.

x-Q. 16. How do you proportion the essence in a plant ?

A. By distilling a certain quantity of plants and weighing the quantity of essence obtained thereby.

By Mr. Rocques : Aud for the alcoholate ?

661

x-Q. 17. In the perfumed alcoholate, how do you proportion the essences ?

A. I do not proportion the essences of perfumed alcoholate; I make an alcoholate with a given quantity of essence and I examine the comparative strength.

x-Q. 18. How do you proportion the essences in a liqueur ?

A. How to proportion the essence in a liqueur ? I would analyze them either by natural means, in isolat-
662 ing the essence by distillation, or by means which I have not indicated.

x-Q. 19. That you do not wish to indicate ?

A. No.

By Mr. Bonnet (to Mr. Massignon, the witness) : you do not hear. (To Mr. Kelly) : Mr. Massignon does not hear. Will you come a little nearer.

(To Mr. Massignon) : You are asked if you
663 do not wish to indicate it.

A. No, I have none.

By Mr. Bonnet : I desire to say that there is a misunderstanding. The witness wishes to say that he has no means at his disposal.

The Witness : I have none.

By Mr. Kelly : Let us put that the witness
664 wishes to say that he has no means at his disposal for proportioning the essences in a liqueur.

By Mr. Bonnet : I will permit myself to have an observation recorded, that is that in this case it is necessary that the questions should not give rise to any ambiguity. I suppose that up to the present you wished to put the question in order to know in what way a liqueur containing an essence is analyzed, for there are two matters to be examined : the liqueur contains one essence or contains several essences.

665

x-Q. 20. How do you determine a single essence in a perfumed alcoholate ?

A. How to analyse a perfumed alcoholate ? I have told you ; comparatively.

By Mr. Bonnet : (to Mr. Massignon, the witness) : Mr. Kelly asks you how do you determine an essence in a perfumed alcoholate—An essence ?

666

A. A single essence ? By isolating it from the alcohol.

667

668

669

UNITED STATES CONSULATE,
CITY OF TURIN,
KINGDOM OF ITALY. } ss.

Carthusian Fathers
versus
Cusenier Company.

SESSION OF SATURDAY, February 24th, 1906, at 9.30 a. m.

670

Present:

HUGO PIZZOTTI, ESQUIRE, Vice-Consul of the United States of America at Turin, Italy, Commissioner;

REV. FATHER BAGLIN, religiously known as DOM MICHEL;

J. BONNET, ESQUIRE, Counsel for the Plaintiffs, assisted by MR. BARBANCEY, his secretary, by MR. MAYAUD, religiously known as DOM JACQUES, former General Secretary of the Order of the Carthusians, and by MR. BACHRICH, private stenographer;

671

EDMOND KELLY, ESQUIRE, Counsel for the Defendants, assisted by MISS GILLET, private stenographer;

MR. PAUL BONNET, official stenographer, duly sworn according to law by the Commissioner at the opening of the session.

672 THE REVEREND FATHER BAGLIN, of Calci, near Pisa, monk in Holy Orders, aged sixty-six years and upwards, having been produced, sworn and examined on the part of the Plaintiffs, doth depose and say as follows:

DIRECT INTERROGATORIES BY MR. BONNET:

Q. 1. My Reverend Father, will you give me your name?

A. Baglin.

Q. 2. Your age?

673

A. Sixty-six years and a few months.

Q. 3. Your residence?

A. The Chartreuse of Calci, near Pisa.

Q. 4. What do you do? Are you a monk, or are you a layman?

A. I am a monk.

Q. 5. What rank and what functions have you held in the Order of the Carthusians?

A. I was Superior-General of the Order of the Carthusians. 674

Q. 6. Did you occupy any office at the Grande Chartreuse?

A. I was Prior of the Grande Chartreuse, and, by this quality, Superior General of the Order of the Carthusians.

Q. 7. Where was this convent of the Grande Chartreuse situated?

A. In France, in the Department of the Isère, not far from Grenoble.

Q. 8. Where was the principal See of the Orders of 675 the Carthusians?

A. At the Convent of the Grande Chartreuse.

Q. 9. For how long a time have the Carthusian Fathers been at the Convent of the Grande Chartreuse?

A. For about eight centuries.

Q. 10. In a religious order, what is the Mother House?

A. The Mother House in a religious order is that where the Superior General resides, who has jurisdic- 676 tion over all the homes and all persons of the Order.

Q. 11. When your Order was in France, where was the Mother House situated?

A. At the Convent of the Grand Chartreuse.

Q. 12. Where is the Mother House of your Order situated at the present time?

A. The Mother House of our Order is at the present time at the Chartreuse of Farneta, near Lucca.

Q. 13. On what date were you named Prior of the Convent of the Grande Chartreuse?

677

A. In October, 1892.

Q. 14. Was your authority, as Prior of the Covent, widespread?

A. My authority covered all the houses of the Order and all persons of the Order.

Q. 15. Did you have several Chartreuses in France?

A. Yes, Sir.

Q. 16. Were you obliged to leave France?

A. Yes, Sir.

678 Q. 17. Are there not at the present time any Chartreuses in France occupied by Carthusians?

A. No, Sir.

Q. 18. On what date did your Order leave France?

A. The 29th of April, 1903.

Q. 19. As the result of what events did you leave France?

A. As the result of the Law of July 1st, 1901, called Law on the Associations.

Q. 20. Is your congregation at the present time de-
679 clared as an authorized association?

A. No, Sir.

Q. 21. Can your order exist in France under the règime of the law of 1901?

A. No, Sir.

Q. 22. The Mother House is at the present time, you have said, at Lucca. Are you the Prior of same?

A. No, Sir.

Q. 23. For how long a time have you no longer been the Prior?

680 A. Since the month of May, 1905.

Q. 24. Before its expulsion from France, did the Congregation of the Carthusians only have Chartreuses in France?

By Mr. Kelly: Objection, there being no proof that the Carthusians were expelled from France.

Q. 24*a*. Before its expulsion from France, did the Congregation of the Carthusians have Chartreuses only in France?

681

A. The Congregation of the Carthusians had Chartreuses in other countries, principally in England, in Switzerland, in Germany, in Austria, in Italy, etc.

Q. 25. Did you address a request, have you requested an authorization of the Government in order to be authorized?

A. Yes, Sir.

Q. 26. Was this request refused?

A. Yes, Sir.

Q. 27. Were you or were you not expelled "manu militari"? 682

A. We were expelled "manu militari" on the 29th April, 1903.

Q. 28. The 19th of April?

A. No, the 29th.

Q. 29. Is the Order of the Carthusians proprietor of all the marks deposited, both in France and abroad, by Father Rey or Father Grézier?

A. Yes, Sir.

Q. 30. In a memorial addressed to the Chamber of 683
Deputies you declared that the Order of Carthusians was not proprietor of those marks, and before the Courts of the United States you declare you are the proprietor. Will you explain to me this contradiction?

A. We are the proprietors. We have always been the proprietors of the marks of the Chartreuse. When it was a question of asking the authorization for our Order our Counsellors told us that probably the Government and the French Chambers would make some difficulty about recognizing the Order as proprietor of 684
the marks, and that it would be better to declare that those marks were the property of some particular monk. I followed the advice of our Counsel—against my inclination—because I was persuaded and I am still, and moreover all the monks of the Order are too, that it is the Order that is the proprietor and sole proprietor of the mark.

Q. 31. Is your opinion on the property of the marks formal?

A. Yes, Sir.

685

Q. 32. Have you not recently had occasion to have this opinion confirmed?

A. A judgment of the Tribunal of Grenoble has confirmed it.

Q. 33. What has it confirmed?

A. It has confirmed that the private proprietor, that the person who was supposed to be the private proprietor, was an interposed person, and that it was the Order really which was proprietor of the marks.

686 Q. 34. What rank did you occupy in the Congregation of the Carthusian Fathers at the time that the action in the United States against the Cusenier Company was begun, that is to say the 4th January, 1905?

A. I was then Superior General of the Order.

Q. 35. Is it or is it not with your authority and by your order that this case in the United States against the Cusenier Company was begun?

A. It is with my authority and by my order that it was begun.

687 Q. 36. Was this trial begun in the name and for the benefit of a special convent or in the name and for the benefit of the entire Order?

A. It was begun in the name and for the benefit of the entire Order, all entirely.

Q. 37. Who profits by the commercial operations done in the United States?

A. The entire Order profits by them.

Q. 38. Has the Order of the Carthusian Fathers had its marks registered in the United States?

688 A. Yes, Sir.

Q. 39. (Mr. Bonnet, presenting the witness two bottles of Chartreuse with their marks): Are these marks those which the Carthusian Fathers use for doing business in liqueurs in the United States?

A. Yes, Sir.

Q. 40. (Mr. Bonnet, showing to the witness yellow labels and green labels): Are these marks also those which you use for doing business in the United States?

A. Yes, Sir.

689

Q. 41. Are these round labels really those which you stick on the cork ?

A. Yes, Sir.

By Mr. Bonnet : Will you hand them to the Commissioner that he may annex them and sign them.

Q. 42. In whose name have these marks been registered in the United States ? 690

A. They have been registered in the name of Father Grézier.

Q. 43. Who was Father Grézier.

A. He was the Procuror of the Carthusians.

Q. 44. These marks, registered in the name of Grézier, in the United States, have they or have they not been registered for the benefit of the entire Order ?

A. They have been registered for the benefit of the whole Order in its entirety. 691

Q. 45. These marks have never been ceded ?

A. Never.

Q. 46. Before your expulsion from France did the congregation of Carthusians manufacture a liqueur ?

A. Yes, Sir.

Q. 47. What was this liqueur named ?

A. La Chartreuse.

Q. 48. Where did you manufacture it ?

A. At the Grande Chartreuse and at Fourvoirie.

Q. 49. Who did this manufacture ? 692

A. Carthusians.

Q. 50. Who selected these Carthusians entrusted with the manufacture ?

A. It was I, it was the Superior General.

Q. 51. For this manufacture had you a formula, a secret ?

A. Yes, Sir.

Q. 52. To whom was this formula confided ?

A. To him who was entrusted, to the Carthusian who was entrusted with the manufacture.

693

Q. 53. Was the liqueur sold under the mark which you have seen and in the bottles which are there before your eyes?

A. Yes, Sir.

By Mr. Bonnet: Will you kindly identify those bottles and those labels by placing your signature thereon?

694 Q. 54. Where was this liqueur sold?

A. It was sold throughout the entire world.

Q. 55. Did you sell it more particularly in the United States?

A. Yes, Sir, certainly.

Q. 56. After your departure from France where did you set up the manufacture of the liqueur?

A. The manufacture of the liqueur was set up at Tarragona.

Q. 57. Who manages it?

695 A. It is a Carthusian.

Q. 58. By whom is this Carthusian appointed?

A. He is appointed by the Superior General.

Q. 59. At your factory at Tarragona do you still manufacture the same cordials and liqueurs formerly manufactured in France?

A. Exactly the same.

Q. 60. The liqueurs manufactured at Tarragona, are they manufactured according to the same formula and with the same plants?

696 A. Precisely.

Q. 61. The liqueurs manufactured at Tarragona, are they the same as those which were formerly manufactured at the convent of the Grande Chartreuse?

A. Yes, Sir.

Q. 62. Why?

A. Because the same plants, the same elements, the same secrets, the same processes are used.

Q. 63. Is this formula the property of the Carthusian Fathers?

A. Yes, Sir.

697

Q. 64. Has this formula remained secret?

A. Yes, Sir.

Q. 65. Who takes care of this secret?

A. The person who is appointed for the manufacture.

Q. 66. Is there nobody else?

A. Pardon, Sir, there are others, there is one other.

Q. 67. Who is it?

A. Ah, I cannot make that known.

Q. 68. Is the person who takes care of the secret 698
known to all the Carthusians?

A. No, Sir.

Q. 69. To whom is he known?

A. To the Superior General.

Q. 70. By whom does the Order of the Carthusians have the products manufactured in Spain sold?

A. By the Union Agricola.

Q. 71. Do you know if, following your expulsion from France, a Liquidator was named for the property which your Order possessed in France? 699

A. Yes, Sir.

Q. 72. Do you know the name of this Liquidator?

A. Yes, it is Mr. Leconturier.

Q. 73. Do you know whether this Liquidator has had a liqueur manufactured at Fourvoirie?

A. Yes, Sir.

Q. 74. By whom does he get the liqueur manufactured?

A. By Mr. Cusenier.

Q. 75. Does he have this liqueur sold by making use 700
of your marks?

A. Yes, Sir.

Q. 76. How do know that?

A. By the proceedings which we have been obliged to bring against him.

Q. 77. On leaving France did you take your formula with you?

A. Yes, Sir.

Q. 78. Do you still manufacture according to the same formula?

701

A. Exactly.

Q. 79. Do you always obtain the same liqueur every year?

A. The same liqueur.

Q. 80. However there are plants existing, however plants in general have a strength in essence which varies from year to year. In spite of this variation in the strength of the plants, do you always obtain the same liqueur?

702 A. Yes, Sir.

By Mr. Kelly: Objection, as leading.

Q. 81. By what processes are you always able to obtain a liqueur which is always the same, with plants having a varying strength?

A. That is our secret.

Q. 82. When you were in France what kind of plants did you use for the manufacture of your liqueurs?

703 A. We used cultivated plants, wild plants and exotic plants.

Q. 83. From where did the cultivated plants come?

A. The cultivated plants came either from the group of the Grande Chartreuse or from elsewhere.

Q. 84. Where did you cultivate these plants?

A. We cultivated them partly at Chougnes and partly around the Chartreuse.

Q. 85. Where did the wild plants that you used come from?

704 A. They came partly from the group of the Grande Chartreuse and partly from elsewhere.

Q. 86. Were these plants used fresh or dry?

A. Always dry.

Q. 87. There is not any which was used fresh?

A. One only, and that also was often used dry.

Q. 88. Would you have any objection in naming me this plant?

A. Oh, no, it is the orangette (small orange).

Q. 89. Is the orangette gathered in the group of the Grande Chartreuse?

705

A. No, Sir, for a good reason—

Q. 90. Do all the parts of the group of the Grande Chartreuse admit of the gathering of wild plants ?

A. Oh, all.

Q. 91. And the cultivated plants, when they are taken outside of the group, are they suitable ?

A. They suit very well.

Q. 92. Have you cultivated any outside of the group ?

A. Yes, Sir, at Chougnes. 706

Q. 93. Where is Chougnes ?

A. Chougnes is situated 25 kilometres from the group of the Grande Chartreuse.

Q. 94. Do you have plants sent to you from Chougnes at the present time ?

A. No, Sir.

Q. 95. Why do you no longer have them sent ?

A. Because Chougnes was taken from us by the Liquidator.

Q. 96. Were the plants of Chougnes as good as those 707 of the group ?

A. They were even better.

Q. 97. Is the climate of Chougnes as suitable as that of the group of the Grande Chartreuse where you did the cultivating ?

A. Yes, Sir.

Q. 98. When the wild plants are taken outside of the group, are they suitable or are they not suitable ?

A. They suit, provided they are taken at a certain altitude. 708

Q. 99. At what altitude is it suitable to take these plants ?

A. I have no answer to make, Sir.

Q. 100. Must not certain plants, wild or cultivated, necessarily be gathered in the specified places of the group of the Grande Chartreuse ?

A. No, Sir, none.

Q. 101. Do you use at Tarragona the same plants you used in France ?

A. Exactly the same.

709

Q. 102. From where do these plants come?

A. They come from France and abroad; from France particularly, especially from the group of the Grande Chartreuse, and from abroad.

Q. 103. Each species of plants which you use at the present time, does it come from the same place as it came from when you were at the Grande Chartreuse?

A. Yes, Sir.

Q. 104. When I speak of the same place, I will ex-
710 plain myself: Can you still have plants coming from the part which was conceded to you in the neighborhood of the Chartreuse?

A. Not in the least.

By Mr. Kelly: Objection as leading.

Q. 105. When you were at the Chartreuse and you had not enough cultivated plants, what did you do?

A. We applied to Mr. Villard, who supplied them
711 to us.

Q. 106. Mr. Villard supplied you with all the species of cultivated plants of which you had need?

A. Yes, Sir, all.

Q. 107. Where did Mr. Villard procure these cultivated plants?

(No reply).

Q. 108. Did he procure them in France or abroad?

A. He procured them in France, Sir.

712 By Mr. Kelly: Objection. The witness has been asked something which is not to his personal knowledge.

Q. 109. Did you give instructions to Mr. Villard for the supply of your plants?

A. We told him to supply us with the plants exactly which were used for the manufacture at the Grande Chartreuse and at Fourvoirie.

Q. 110. On leaving France did you appoint any one to send you the plants which grow in France?

A. Yes, Sir.

713

Q. 111. Who is this person ?

A. It is Mr. Villard.

Q. 112. Who is Mr. Villard ?

A. He is a chemist-druggist-herborist of Grenoble.

Q. 113. What are the plants that Mr. Villard supplies you with at the present time ?

A. Mr. Villard supplies us at the present time with all the plants which come from France, and that is all.

Q. 114. Does he supply you with the exotic plants ? 714

A. No, Sir ; he supplied a few of them formerly, but not now.

Q. 115. Where do the wild plants come from which he supplies you with ?

A. The wild plants that Mr. Villard supplies us with come from France, and principally from the group of the Grande Chartreuse.

By Mr. Kelly : Objection, as calling for testimony on points which are not known to the 715 witness.

Q. 116. Where do the cultivated plants come from with which Mr. Villard supplies you ?

By Mr. Kelly : Same objection.

Q. 116*a*. Will you answer me ; where do the cultivated plants come from that Mr. Villard supplies you with at the present time ? 716

A. They come from France.

Q. 117. When Mr. Villard supplied you with the plants, when you were in France, did he supply you with all the exotic plants of which you had need ?

A. No, Sir, a few only.

Q. 118. At what period did you commence to attend to the sale of your liqueur ?

A. About half a century ago.

Q. 119. How did you make the liqueur known originally ?

717

A. At the beginning we did not do any advertising. The liqueur became known little by little by the generous hospitality which we always showed at the Grande Chartreuse and at all the houses of the Order.

Q. 120. In what manner was this hospitality shown?

A. We offered a little glass to our visitors, to the reclusionists who came, and to the people who came to see us.

718 By Mr. Bonnet: I thank you.

Cross-examination by Mr. E. Kelly, representing the Defendants:

x-Q. 1. You have said, Reverend Father, that it is by your instructions that these proceedings were brought in the United States. You know of the petition which has been made in your name?

A. Yes, Sir.

719 x-Q. 2. You have said that the Carthusian Fathers occupied the valley of the Grande Chartreuse for eight centuries, did you not?

A. About eight centuries.

x-Q. 3. Has this occupation been uninterrupted?

A. It was interrupted a hundred years ago, at the great French Revolution, up to 1816.

x-Q. 4. That is to say from 1793 to 1816?

A. Yes, Sir, up to the time of our return to the Grande Chartreuse.

720 x-Q. 5. And then, you occupied the Grande Chartreuse up to what date?

A. Up to 29th April, 1903.

x-Q. 6. When you say that you were expelled from France, do you mean to say by that that it is impossible for you, personally, to return to France?

A. Myself personally?—I do not know. I have not tried.

x-Q. 7. But still?

A. As an Order we are expelled.

x-Q. 8. Are you expelled or simply not authorized?

721

A. We are not authorized, and hence we are obliged to go away, because our duty is to live with our Order, under our Order; and as, with the French law, we cannot live under our Order, we are obliged to go away. That is equivalent to an expulsion.

x-Q. 9. The expulsion results from your rules and not from the law?

A. Pardon, from the law.

x-Q. 10. If you no longer wished to follow the rule of your Order you could return to France? 722

A. If we would be apostates, yes.

x-Q. 11. It is the vows you have taken which prevent you returning to France?

A. Yes, Sir.

x-Q. 12. But, even having made these vows, if an urgent need obliged you to return to French territory, there is nothing in the law which prevents you re-entering French territory?

A. I do not know whether there is anything in the law which would prevent us, but we could not go back 723 there to go and take up our residence.

x-Q. 13. But you could go back to France? There is nothing in the law which prevents you personally returning to France?

A. No, personally, to pass through there.

x-Q. 14. Or even for you to personally take up your residence if you consented to no longer live as a congregation?

A. If one would be an apostate, yes.

x-Q. 15. Have you the statutes of the Carthusians 724 with you?

A. Here?—no, Sir.

x-Q. 16. Could you, if needed, produce them?

A. Yes.

x-Q. 17. From when do these statutes date?

A. Several centuries.

x-Q. 18. Have these statutes been published?

A. Yes, Sir, they are published.

x-Q. 19. And since when?

A. They were printed several centuries ago.

725

x-Q. 20. Since several centuries ?

A. Yes, Sir.

x-Q. 21. Therefore the statutes which were submitted to the Government, at the time of your request, are the same statutes that you have always had ?

A. Yes, Sir.

x-Q. 22. Can you remember if the terms of Article 5 are as follows :

726

" Every member of the Association, either " priest or layman, after the probation below " indicated ; postulate or noviciate, make the " promise to live in obedience to the Superior, " in conformity to the present statutes." ?

A. Yes, Sir.

x-Q. 23. Those are exactly the terms of Article 5 ?

A. Yes, Sir.

x-Q. 24. What does this word " obedience " com-
727 prise ?

A. The word is clear, plain.

x-Q. 25. Is it an absolute obedience ?

A. Yes, Sir.

x-Q. 26. There are no exceptions ?

A. If the Superior, in an imaginary case, ordered a wicked thing evidently one should not obey. If the Superior ordered a bad thing, forbidden in itself, the natural right tells us : one ought not to obey.

x-Q. 27. But in your opinion it is inconceivable that
728 a Superior should order something against nature. Consequently it can be said, at least, that the obedience is absolute ?

A. Yes, Sir.

x-Q. 28. Will you tell me what were the respective functions, the duties of the Fathers and of the Brothers ?

A. The Fathers lived in seclusion and were entrusted with singing service ; the Brothers atttended to the manual labors.

x-Q. 29. But they all took perpetual vows ?

729

A. Yes.

x-Q. 30. Comprising the obedience ?

A. Yes, Sir.

x-Q. 31. Was the Reverend Grézier Father or Brother ?

A. He was a Father.

x-Q. 32. Do you know that the American trade-mark was taken out in the name of " Frère Grézier " (Brother Grézier) ?

A. Yes, Sir, we must always sign " F ". There are 730
the Fathers and the Brothers ; the Fathers sign " F " Frater, Brother. But one does not always sign with a single " F ", one sometimes signs " Fr."

x-Q. 33. Do you know that, for the American mark, it was written without abbreviation as " Frère Grézier " ?

A. I have not understood.

x-Q. 34. I produce the mark in the United States, No. 3377.

A. Yes, Sir. 731

x-Q. 35. And I point out to you that this mark was taken in the name of " Frère Marcel Marie Grézier " ?

A. Yes, Sir, evidently ; but that is not the signature, that.

x-Q. 36. The signature is " Fre Marcel Mie Grézier " ?

A. Marcel Marie Grézier, yes, Sir.

x-Q. 37. Does that not indicate that at that time he was a Brother ?

A. No, Sir, he never has been. 732

x-Q. 38. Therefore it is an error in the mark ?

A. Not at all.

x-Q. 39. That is not an error ?

A. Not at all.

x-Q. 40. Therefore, being a Father one calls oneself a Brother ?

A. All the monks call themselves Brothers, but there are the Fathers who live in seclusion and are entrusted with singing service, and the lay-brothers who attend to the

733 manual labors. Therefore it is not the word "Brother" which is proper: there are the choir and the laborers, but all are Brothers.

x-Q. 41. Then how would you have me make the distinction between the Fathers, who say the mess, and the Brothers, who do the manual labors. I want to know which word I should use in order to distinguish them in the examination?

A. Generally, commonly speaking, those who are
734 priests, who say the mess, who live in seclusion, are the Fathers, one calls them Fathers, and the others who are not priests and who are entrusted with the manual labors, one calls them Brothers, commonly speaking.

x-Q. 42. Therefore I am going to use these words, commonly speaking, in my examination?

A. Yes, ordinarily.

x-Q. 43. Was the secret sometimes confided to the Brothers?

735 A. Yes, to those who are entrusted with the manufacture, but to each one his own part. No one among them knows it entirely.

x-Q. 44. Therefore beyond those who knew the secret in its entirety, there were other persons who knew it partly?

A. Yes, Sir, those who manufactured evidently knew the processes of manufacture. They only knew their own part.

x-Q. 45. But not the whole of it?

736 A. Oh, no.

x-Q. 46. Dare I ask if you know the secret?

A. Am I obliged to reply?

x-Q. 47. The reason why I put the question to you is this: if you do not know the secret I can put questions to you on the subject of the secret without indiscretion, whereas if you know it that will be more difficult for me.

By Mr. Bonnet: I want to make an objection: although the witness has sworn to tell the truth,

737

the whole truth, he is not bound to reply to the questions which may be put to him and which, in his opinion, would imply a divulging, partly or wholly, of the secret of manufacture.

By Mr. Kelly: I make an object to any interruption on the part of my adversary, except the objections which are based on law.

(To the Stenographer): Will you repeat my question?

738

A. I have only one reply to give you: I was the Superior General and, as Superior General, I had the safe keeping of the secret.

x-Q. 48. You have never been Proctor of the Grande Chartreuse?

A. No, Sir.

x-Q. 49. Who is particularly entrusted with the manufacture of Chartreuse: the Proctor or the Prior?

A. It is a Father Carthusian who is named by the Superior General.

739

x-Q. 50. I ask you which of the two is entrusted with the manufacture: is it the Prior or is it the Proctor?

A. It is the Prior who names, who attends to that. The Proctor is entrusted by the Prior to attend to these details.

x-Q. 51. And the Prior does not attend himself to the manipulation?

A. Oh, not at all.

x-Q. 52. But does he not superintend the manipulation?

740

A. He superintends that from high; he has the head superintendence.

x-Q. 53. That is to say to name the people who must do the manufacturing?

A. Yes, Sir, but he does not attend to the manufacture itself.

x-Q. 54. He has the right of superintending?

A. Certainly.

x-Q. 55. But does he exercise this superintendence?

741

A. Yes, Sir.

x-Q. 56. How many hours per day does he spend in the factory ?

A. That is difficult.—The Superior lives at Farneta and the manufactory is at Tarragona. Therefore it is impossible.

x-Q. 57. That is to say the Prior, the Superior, lives in Italy and the factory is in Spain ?

A. Yes, Sir.

742 x-Q. 58. Then it is impossible at the present time for the Prior to attend to the actual manufacture ?

A. Naturally.

x-Q. 59. And when you were yourself Prior at the Grande Chartreuse, how many hours per day did you spend in the factory ?

A. I often went down to Fourvoirie.

x-Q. 60. How many times per day ?

A. I think I have not to tell you that.

x-Q. 61. Did you go every day to Fourvoirie ?

743 A. No, Sir, not every day. But I often went down there.

x-Q. 62. What distance is Fourvoirie from the Grande Chartreuse ?

A. I do not know the kilometric distance. It must be eight or nine kilometres ; I do not know exactly. It has not been measured.

x-Q. 63. Where did you live ?

A. At the Grande Chartreuse.

x-Q. 64. Where did the Proctor live ?

744 A. At the Grande Chartreuse.

x-Q. 65. Did not the Proctor live at Fourvoirie ?

A. He went down there very often, more often than I. There he spent sometimes from four, five, six days at a time.

x-Q. 66. He had a dwelling there ?

A. But his residence was at the Grande Chartreuse.

x-Q. 67. He had a dwelling at Fourvoirie ?

A. Yes, Sir.

x-Q. 68. It was in fact the Proctor who manufactured the Chartreuse ?

745

A. Yes, Sir.

x-Q. 69. And you only reserved to yourself the high superintendence ?

A. The high superintendence, yes, Sir.

x-Q. 70. How does it happen that in the petition which gave rise to these proceedings you are qualified as the Proctor of the Order of the Carthusians ?

A. It is an error.

x-Q. 71. It is an error ? Who was at that time the " Procureur " (Proctor) of the Order of the Car- 746
thusians ?

A. It was Father Rey.

x-Q. 72. Who is to-day the Proctor of the Order of the Carthusians ?

A. It is Father Dom Roch Mallet.

x-Q. 73. Who is to-day the Superior General ?

A. Father Dom René Herbault.

x-Q. 74. Since when is he the Superior General ?

A. Since the month of May, 1905.

x-Q. 75. Since when is it that Father Roch Mallet 747
is Proctor ?

A. He has been Proctor for three years, I think.

x-Q. 76. Before bringing your action in the United States did you consult the other members of the Order of the Carthusians ?

A. Yes, Sir, I consulted the Council of the Order of the Carthusians.

x-Q. 77. Of whom is this Council composed ?

A. The Council of the Carthusians is composed of the Fathers who reside at the Grande Chartreuse with 748
the Superior General.

x-Q. 78 You consulted them before bringing the action. How many are they ?

A. They are seven or eight, I do not know the number exactly.

x-Q. 79. Had you to consult the others ?

A. No, Sir.

x-Q. 80. Is this state of things the result of your statutes ?

A. Yes, Sir. No grave decision ought to be taken

749

without consulting the Council. It is not absolutely strict obligation, one ought—

x-Q. 81. But the Superior General can, with the consent of the Council, bring actions without consulting the other Fathers and Brothers?

A. Yes, Sir.

x-Q. 82. How many Fathers and Brothers were at the Grande Chartreuse when you left it?

A. I do not understand the question: It is at the
750 time when I left the Grande Chartreuse or at the time when I left Farneta, last year?

x-Q. 83. At the time when you left the Grande Chartreuse?

A. There were but very few Fathers. We were twelve or fifteen Fathers (it was nearly evacuated), and an equal number of Brothers.

x-Q. 84. Do you remember how many members of the Order were at the Convent of the Grande Chartreuse at the time when you made your request for
751 your authorization?

A. No, Sir. I do not remember the number, but the community was still there in its entirety.

x-Q. 85. Did you produce a list of the Fathers and Brothers at the Grande Chartreuse at the time when you requested the authorization?

A. Yes, Sir.

By Mr. Bonnet: Objection, not bearing any relation to the proceedings.

752

x-Q. 86. How many members, Fathers and Brothers, belong to the Order of the Grande Chartreuse?

A. I do not see the utility of the question.

x-Q. 87. I ask it all the same, Reverned Father, and I have excellent reasons for asking it. (To the stenographer): Will you repeat the question?

A. We have in all the homes which were in France and abroad several hundred.

x-Q. 88. You do not know the exact number?

A. No, because it varies from one moment to an-

753

other. There are new arrivals, and those who are called away by death. The number varies from day to day.

x-Q. 89. It would be difficult for you to establish the exact number at the time when you brought the action?

A. Yes, Sir, for that reason.

x-Q. 90. When you requested the authorization of the Government for the Congregation of the Carthusian Fathers, did you include the other Convents, or 754 was your request simply for the Convent of the Grande Chartreuse?

A. Solely for the Grande Chartreuse.

x-Q. 91. Had you not also to request the authorization for the other Convents?

A. No, they were gone. All our homes in France were evacuated then.

x-Q. 92. There remained then only the Fathers and Brothers at the Grande Chartreuse?

A. Yes, Sir. 755

x-Q. 93. And that is the reason why you did not ask for the authorization but for the Grande Chartreuse?

A. Yes, Sir.

x-Q. 94. You have stated, in your petition, that by your quality of Proctor you were to-day at the head of the Industrial Administration of the Order. What ought I to understand by this declaration since you are not the Proctor?

A. It was I who had the responsibility of all.

x-Q. 95. But is it not, according to your statutes, the 756 Proctor who is really at the head of the industrial affairs?

A. No, it is the Prior who is at the head of all, only he entrusts some duties to his monks.

By Mr. Bonnet: Objection. I have pointed out since the beginning of the action that it is by error that, in the petition, Father Dom Baglin was styled as "Procureur", and our attorneys in New York have done the needful so

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that this observation may be recorded. It is necessary to read in the petition "Prieur" (Prior) instead of "Procureur" (Proctor).

By Mr. Kelly: I beg that Mr. Bonnet will tell me where this modification is to be found.

By Mr. Bonnet: You can ask your attorneys for it. I have transmitted this obversation to our attorneys at New York. In any case I record my objection.

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x-Q. 96. The petition declares that the manufacture of the liqueur is made "under the immediate supervision of the petitioner," which I will thus translate: "sous le surveillance immediate du demandeur". Are these words to be applied to the Prior or to the Proctor?

A. They may be applied to both. I have told you that I went down very often to Fourvoirie, and that I occupied myself, when I was there, with the liqueur.

759 x Q. 97. To-day that is impossible, you have stated so yourself?

By Mr. Bonnet: Objection, as leading.

By Mr. Kelly: I ought not to be obliged to tell my adversary, Mr. Bonnet, that when I am cross-examining a witness I have the right to put leading questions. (Turning to the Stenographer): Will you repeat my question?

The Stenographer (reading) "Mr. Kelly:

760 The petition declares that the manufacture of the liqueur is made under the immediate supervision of the petitioner. Are these words to be applied to the Prior or to the Proctor?"

A. To both.

The Stenographer (continuing): "The Revd. Father: I have told you that I went down very often to Fourvoirie, and that I occupied myself, when I was there, with the liqueur.

Mr. Kelly: To-day that is impossible, you have stated so yourself."

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x-Q. 98. Well ?

A. But I have already replied.

x-Q. 99. To-day it is the Proctor who occupies himself with the manufacture ?

A. To-day it is different. There is a monk who is entrusted with the manufacture at Tarragona, who has all the authority, all the secret and some Carthusians under his orders. The Proctor cannot displace himself and go to Tarragona for that. In fact he who is at Tarragona may be considered as the Prior of the 762
Order for that.

x-Q. 100. And it is in fact the Proctor of the Order who is entrusted generally, who was entrusted very particularly with the manufacture ?

A. But, Sir, I think I have replied already to that question.

By Mr. Kelly : I have the right to state precisely. I do not wish to insist but I have the right to state precisely. Therefore I repeat the 763
question.

A. The Proctor of the Order resides with the Superior General. He cannot be entrusted—

By Mr. Kelly (interrupting) : I speak of the period when you were at the Grande Chartreuse.

A. Then, yes, under the high direction of a Reverend Father, of the Superior General.

x-Q. 101. I will repeat you Article 15 of your statutes, thus worded : " Each home is governed by a 764
" Prior, with the help of several officers entrusted with " divers obediences. The Vicar replaces the Prior in " case of illness or absence. The Proctor is charged " with managing the temporalities of the home and " directing the lay-brothers." That is really Article 15 of your statutes ?

A. Yes, Sir.

x-Q. 102. Since how long a time have the Carthusian Fathers made the liqueur of the Grande Chartreuse?

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A. For a long time; since our return; not immediately after our return to France but some time after.

x-Q. 103. Some time after 1816?

A. Yes.

x-Q. 104. Can you remember at about what time it commenced?

A. Not exactly.

x-Q. 105. Can you remember how it is you came to make a liqueur?

766 A. They began in the first place by manufacturing for the monks, for the invalids, and little by little it took a development; it became known, not by advertising but from our visitors who deemed it excellent, and then it spread.

x-Q. 106. What is the liqueur with which you began?

A. It is the elixir.

x-Q. 107. And you are sure that the elixir was not manufactured before 1816?

A. Yes, indeed, the formula was known before 1816.

767 x-Q. 108. At what time was the formula invented?

A. I do not think that I ought to reply to that.

x-Q. 109. You are not going to reveal a secret to me by telling me the date when it was discovered?

A. I do not remember the date exactly.

x-Q. 110. But about?

A. It was before the Revolution.

x-Q. 111. Before the Revolution, in the 18th Century?

A. Yes.

768 x-Q. 112. Much before?

A. No, not much.

x-Q. 113. Was that invented by a Father?

A. It was the Carthusian Fathers who made use of it. They invented it themselves?—I could not tell you.

x-Q. 114. Was not the secret invented by the Chevalier d'Estrées?

A. Yes, Sir.

x-Q. 115. And it was the Chevalier d'Estrées who gave it to you, to the Carthusians?

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A. Yes, Sir.

x-Q. 116. And since that time, it has been manufactured at the Grande Chartreuse ?

A. Yes, Sir.

x-Q. 117. Did you manufacture a liqueur, an elixir of some kind, before the Chevalier d'Estrées had given you the formula ?

A. No, Sir.

x-Q. 118. Therefore it was the Chevalier d'Estrées who is really the founder of the Chartreuse ? 770

A. No, no, the liqueur has nothing to do with the elixir.

x-Q. 119. Therefore it is only the elixir which has been made according to the formula ?

A. The liqueur has nothing to do with it, it is not the same thing, it is necessary not to confound the liqueur with the elixir. The formula is modified.

x-Q. 120. You have modified it a little ?

A. Yes.

x-Q. 121. Has the manufacture been interrupted ? 771

A. It was during the time that the Carthusians were not present at the Grande Chartreuse.

x-Q. 122. Therefore it is by error that in your petition you say that the manufacture has been carried on without interruption ?

By Mr. Bonnet : Objection. I would like the question to be put clearly in order that there may not be any ambiguity. There is in the mind of the witness, which is not difficult to 772 see, a certain indecision.

x-Q. 123. By what name did you designate the elixir ? Do you remember ?

A. The elixir.

x-Q. 124. Simply the elixir ? that had no other name ?

A. I do not remember the name that was used in the first place.

x-Q. 125. If it was the Chevalier d'Estrées who com-

773 municated the formula of the elixir to you, that could not go back beyond 1733, could it ?

A. Yes, Sir.

x-Q. 126. It was after 1733 ?

A. Yes, Sir.

x-Q. 127. Did you add the word "Chartreuse"? Did you name the elixir "Chartreuse" ?

A. One said "Elixir de la Grande Chartreuse," "Vegetable Elixir manufactured at the Grande
774 Chartreuse."

x-Q. 128. Here is the complete name: "Vegetable Elixir manufactured at the Grande Chartreuse" ?

A. Yes, Sir.

x-Q. 129. And for what length of time have you used this designation ?

A. What do you mean, Sir ?

x-Q. 130. I ask you a question very plainly : it is that you say, my Father, in your petition, that you applied the word "Chartreuse" to the liqueur that has
775 been manufactured for three hundred years :

> "And your orator furthur shows upon infor-
> "mation and belief that he and his said associ-
> "ates, and their predecessors in said Order
> "have, for upwards of three hundred years,
> "made use of the word 'Chartreuse' as a trade
> "mark to designate the said cordial or liqueur
> "manufactured by them."

776 which I translate as follows :

> "Et votre demandeur (that is yourself) ajoute,
> "d'après ses renseignements et d'après sa
> "connaissance, que lui et ses collègues et leurs
> "prédécesseurs dans l'Ordre se sont, depuis
> "trois cents ans, servis du mot 'Chartreuse'
> "comme marque de fabrique pour désigner le
> "dit cordial ou liqueur fabriqué par eux."

Is that exact ?

A. Yes, Sir, it is exact, because it was not known as

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it is now, it was not propagated. There was always something in the Order, something was always manufactured.

x-Q. 131. You manufactured a liqueur which you offered to your invalids?

A. To our invalids.

x-Q. 132. In your home?

A. In our home.

x.Q. 133. And you did no advertising?

A. Never. 778

x-Q. 134. It is correct to say then that you have had a trade mark for three hundred years, that you have used the word "Chartreuse" for three hundred years?

A. Among ourselves, at our home.

x-Q. 135. It is not there a trade mark, is it, no?

A. I am not sufficiently posted on trade marks to reply about that.

x-Q. 136. And you have said that this trade mark has been before the first registration and without interruption "continuously" up to the present time used in businsss in the United States and foreign countries, is that not true? 779

A. I do not understand.

By Mr. Bonnet: Objection. By whom is the petition signed?

By Mr. Kelly: It is signed Alfredo Luis Baglin, "Procureur" of the Order of the Carthusians, on his own account and on behalf of 780 all the members of the Order, by Henri Batjer, his proxy. Now I ask for a reply to my question.

A. Without interruption? If it is the whole time we have been at the Chartreuse, yes.

x-Q. 137. But you were not all the time at the Chartreuse?

A. No, Sir.

781 x-Q. 138. That is to say, without interruption during the whole time that you were at the Chartreuse ?

A. Yes, without interruption ; it is thus that that word should be understood.

x-Q. 139. But you have not always been at the Grande Chartreuse without interruption ? And you have not manufactured all the while without interruption ?

A. During the whole time that we have been at the
782 Grande Chartreuse.

x-Q. 140. And you do not manufacture since 1903 at the Grande Chartreuse ?

A. The Grande Chartreuse of Grenoble ?

By Mr. Kelly : At Grenoble, yes.

A. No, Sir.

x-Q. 141. Therefore the manufacture has been interrupted twice ?

783 A. It has not been interrupted as it was taken up at once at Tarragona, succession of the Grande Chartreuse.

x-Q. 142. And during your absence from the Grande Chartreuse, from 1793 to 1816, you did not manufacture ?

A. At that time, one did not manufacture then.

x-Q. 143. You did not manufacture then, then there has been an interruption ?

A. At Grenoble, necessarily.

784 x-Q. 144. When did your business with the United States begin ?

A. Do you ask me for exact dates ?

By Mr. Kelly : No, about ?

A. I have not got those things in my mind. If I had foreseen that I would have refreshed my memory. I do not know those dates by memory.

By Mr. Kelly : About ?

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A. It was in the time of Father Grézier.

x-Q. 145. Of the time of Father Grézier ?

A. Yes.

x-Q. 146. As soon as you began to work the United States you took the precaution to register your mark in the United States ?

A. I do not think so, Sir. It was registered later probably, not immediately.

x-Q. 147. It was Father Grézier who began the working ?

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A. In the United States, yes, Sir.

x-Q. 148. Do you remember the date when Father Grézier was the " Procureur " (Proctor) of the Order ?

A. It was in 1901 (correcting himself), the last year of the last century, or the beginning of this century that he finished. He was " Procureur " for about thirty years.

x-Q. 149. Therefore it was not beyond 1870 ?

A. I could not tell you. I have not the dates for certain.

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x-Q. 150. But if it was Father Grézier who began working the United States and that he was " Procureur " for only thirty years, that was in 1870 ? It was not beyond 1870 that you began working the United States ?

A. It was he who deposited the marks.

x-Q. 151. Can you tell me when you registered your mark for the first time in France ?

(No reply.)

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By Mr. Kelly : You do not remember ?

A. The question has no relation to the trial.

By Mr. Kelly : It is not you who is to be the judge of that.

A. I speak on my own behalf.

By Mr. Kelly : You can refuse to reply, then I will have the whole of your testimony cancel-

789 led. You are bound, if you come here as a witness, you are bound to reply to all my questions, unless the reply to the question be of a nature to incriminate you. That is our law.

A. It was registered at the beginning of Father Grézier, but the exact year I do not know.

x-Q. 152. It was not filed before ?

A. Yes, it was filed before as it has been signed by
790 Father Garnier.

x-Q. 153. Therefore you are not sure as to the exact date ?

A. That has nothing to do with the affair, the exact date.

x-Q. 154. Did you not trouble yourself about those questions ?

A. I exercised the supervision over the manufacture of the Chartreuse and perhaps over those things, but I have not that in mind at present.

791 x-Q. 155. You have forgotten ?

A. Yes, Sir.

x-Q. 156. Do you make use of the mark in question to-day ?

A. We make use of it, yes, Sir, abroad.

x-Q. 157. You still make use of the same mark abroad ?

A. Yes, Sir.

x-Q. 158. You make use of the same marks to-day as have been here produced ? You are sure of it ?

792 A. Yes.

x-Q. 159. Absolutely sure ?

A. Yes (correcting himself). Ah, I beg pardon, I am now no longer at the Grande Chartreuse, I no longer attend to that. Since the month of May of last year I no longer attend to that.

x-Q. 160. Who attends to this kind of questions to-day ?

A. It is my successor.

x-Q. 161. Who is he ?

A. Dom René Herbault.

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x-Q. 162. It is the Superior General who has succeeded to-day?

A. Who has at the present time the high superintendence.

x-Q. 163. And it is he who can reply to all these questions?

A. Yes.

x-Q. 164. To your knowledge, the Defendants, either Mr. Cusenier or Mr. Lecouturier, have they ever represented that they manufactured the Chartreuse 794
according to the secret formula?

A. To my knowledge?

x-Q. 165. Yes.

A. No, let us see, Sir, I did not exactly grasp—

> By Mr. Kelly: (to the Stenographer) will you repeat the question. (The stenographer reads over question No. 164).

A. They have not been able to, they do not know it. 795

x-Q. 166. Have they never declared that they manufactured chartreuse according to your formula?

A. They do not know it, they cannot pretend that.

x-Q. 167. You said in your petition that the defendant, fraudulently, represented that his liqueur was made according to the famous formula long possessed and now possessed exclusively by the petitioner. Is that true?

A. Yes, Sir. They pretended that they made a liqueur, chartreuse liqueur, but they have never had 796
our formula, nor our methods of fabrication, nor our secret.

x-Q. 168. When and where have the Defendants ever pretended to have manufactured chartreuse according to a secret formula possessed by the Carthusian Fathers? When and where?

A. I did not say that. They pretend to manufacture chartreuse, a liqueur which they wish to supplant ours, therefore a counterfeit; they cannot do it because they have not our secret, our methods of manufacture.

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x-Q. 169. Therefore, have they ever pretended in set terms to manufacture according to your formula?

A. According to our own formula, I do not believe that they can.

x-Q. 170. No, but have they ever pretended to do it?

A. I do not at all know what they said.

x-Q. 171. But you allege here in your petition that they have fraudulently pretended—

A. (Interrupting): Yes.

798 x-Q. 171*a*. To manufacture according to the famous recipe?

A. I had documents once upon a time which enabled me to say that. I had them once upon a time but I have not got them now.

x-Q. 172. But I put you under the necessity of producing them.

A. Verbal or written statements. That would not have been written if I could not justify it.

x-Q. 173. But I ask you now to justify it.

799 A. For nearly a year past I have not concerned myself with those matters; they are no longer in my mind.

x-Q. 174. Who then is now in a position to produce this justification?

A. I do not know; Mr. Bonnet perhaps.

x-Q. 175. Mr. Bonnet is your lawyer. It must be one of you who justifies the declarations of your petition, unless Mr. Bonnet will serve as a witness?

A. I can only reply one thing about that: and that
800 is if it was written; I do not well remember the terms of that report, but that was not written without reason, and once upon a time I must have had all the documents, either verbal or written, which enabled me to write that.

x-Q. 176. Therefore the only explanation that you can give me for this accusation brought against the defendant—a grave accusation which has resulted in an absolute paralysis of our business in the United States—your only reply that you can make is that you must

801

have had at some time the justifications, but you no longer have them?

A. They are not now in my mind.

x-Q. 177. Then I ask you to tell me who can produce this justification?

A. I do not know, Sir.

x-Q. 178. Can your successor produce them?

A. Perhaps.

x-Q. 179. Can the "Procureur" produce them?

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A. Perhaps also.

x-Q. 180. But you know nothing about it? however it is grave to accuse a manufacturer of fraud?

A. But, Sir, a manufacturer who seizes our property, our mark, we can well accuse him of making the false liqueur; "Liqueur manufactured à la Grande Chartreuse"; that mark indicates that it is our own liqueur which he wishes to make.

x-Q. 181. Therefore you have simply drawn a conclusion from the fact that we use the trade mark?

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A. And from other reasons also.

x-Q. 182. What are the other reasons?

A. I have just told you.

x-Q. 183. That is to say that you cannot answer me?

A. That is to say that I had them once on a time only now—

By Mr. Kelly (interrupting): But now is the time to produce them.

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A. I have not got them. If I had foreseen that I would have refreshed my memory.

By Mr. Kelly: It was your duty to foresee.

A. Thank you for the observation.

x-Q. 184. You are here to reply and defend your petition. Therefore I put you under the necessity of producing the justifications of this accusation.

(Silence).

x-Q. 185. You cannot do it?

A. I have replied sufficiently.

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x-Q. 186. You have no other reply to make?

A. Not for the moment.

x-Q. 187. You said, Reverend Father, that the trade mark and the secret belonged to the whole Order?

A. Yes, Sir.

x-Q. 188. Can you furnish justifications for that statement?

A. What justification do you ask, Sir.

x-Q. 189. We have a distinction to establish between
806 the Grande Chartreuse and the Order of the Carthusians?

A. Yes, Sir.

x-Q. 190. Can you possibly explain to us how it happens, whence it results, that the manufacture which was attached to the Grande Chartreuse belongs to all the Order of Carthusians?

A. Because all the houses of the Order are under the Grande Chartreuse, and the profits of the manufacture are for all the houses of the Order. It is the
807 Grande Chartreuse which distributes them.

x-Q. 191. Then it is but one congregation?

A. The entire Order, yes, Sir.

x-Q. 192. Therefore what belongs to one house belongs to all?

A. Yes, Sir.

x-Q. 193. Does that result from your statutes?

A. No, Sir.

x-Q. 194. From what does that result?

A. From custom.

808 x-Q. 195. From custom only?

A. Custom makes law.

x-Q. 196. Is it correct, yes or no, that the idea of manufacturing the liqueur was created in France? in the Alps at the monastry of the Grande Chartreuse?

A. If it is correct, yes or no, that the idea of manufacturing the liqueur was created at the Grande Chartreuse? Yes, Sir, it was created at the Grande Chartreuse.

x-Q. 197. The idea of manufacturing was created at the Grande Chartreuse?

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A. Yes, Sir.

x-Q. 198. I understood you that it was from the Chevalier d'Estrées that you had the idea?

A. Of the elixir.

x-Q. 199. You make a distinction between the elixir and the Chartreuse?

A. And the liqueur, yes.

x-Q. 200. What is the difference between the two?

A. The elixir is a very concentrated elixir; the liqueur can be drunk by everybody, the elixir cannot. 810
It is used in certain cases: for invalids, for our Fathers who are ill.

x-Q. 201. Is not the elixir the basis of the Chartreuse?

A. No, Sir.

x-Q. 202. Not at all?

A. There are really some points in common, but no, it is a different process.

x-Q. 203. Therefore the elixir was the idea of the Chevalier d'Estrées, but the liqueur emenates entirely 811
from your Order?

A. Yes, Sir.

x-Q. 204. Who keeps the accounts of the Order?

A. It is a Carthusian, it is a monk.

x-Q. 205. Under the orders of who?

A. Under the orders of a Reverend Father, of the Superior General.

x-Q. 206. Of the Superior General?

A. Yes.

x-Q. 207. And the revenue which came to you from 812
the manufacture of the Chartreuse, were the profits carried to the account of the Grande Chartreuse or to the account of the entire Order?

A. That is to say that it was at the Grande Chartreuse that the accounts were kept, and the Grande Chartreuse distributed to the entire Order.

x-Q. 208. Therefore these profits were carried in the first place to the credit of the Grande Chartreuse?

A. Yes.

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x-Q. 209. Were the accounts brought before the annual assembly of the Order or the Chapter?

A. Yes, Sir, an account was called for, yes.

x-Q. 210. Was it at these annual assemblies that the receipts were distributed?

A, Yes, Sir, at that time and at other times; several times in the year.

x-Q. 211. Who made the distribution?

A. It was the "Procureur," sometimes the Prior
814 when he wished to do so. The Superior, if he liked, had the right to do so.

x-Q. 212. It was generally the "Procureur" who did it?

A. The "Procureur", yes.

x-Q. 213. According to a rule or according to the needs of the houses?

A. According to both: a rule and the needs.

x-Q. 214. There was not an absolute rule?

A. Excuse me, Sir, there was a rule, but additions
815 were made according to the needs.

x-Q. 215. From whom did the rules emenate, and the changes in the rule?

A. It emenated from the Chapter General.

x-Q. 216. Is not each monastery independent from a temporal and pecuniary point of view?

A. As a matter of fact formerly they were independent, because each one could have sufficient to live on. But now, from this point of view they are no longer independent, they draw what they have, their temporal,
816 from the Grande Chartreuse.

x-Q. 217. When you say the Grande Chartreuse you no longer mean the Grande Chartreuse of Grenoble?

A. I mean the Mother home.

x-Q. 218. Has not each home its own "Procureur"?

A. Yes, Sir.

x-Q. 219. Is the "Procureur" of each house bound to render his accounts to the Prior?

A. Yes, Sir, every year.

x-Q. 220. Is it to the Prior or to the "Procureur" that he gives his accounts?

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A. Sir, each house has its private account and it gives same to the Superior General after.

x-Q. 221. Is it correct that, from the monastic point of view, the Carthusians have taken the vow of poverty?

A. Yes, Sir.

x-Q. 222. What does that mean?

By Mr. Bonnet: Objection. I have allowed all the last questions to be put by Mr. Kelly, but I object as these questions have no relation to the trial which is pending in the United States and they only serve to post the Liquidator for the trials which he has or may have in France. 818

A. That means that each particular monk cannot possess anything of his own.

x-Q. 223. He can only possess for the Order?

A. For the Order.

x-Q. 224. Is it an absolute rule? 819

A. Yes, Sir, absolute.

x-Q. 225. To which there is no exception?

A. No.

x-Q. 226. You are absolutely sure of that?

A. Yes.

x-Q. 227. Under what conditions can a Carthusian become secularized?

By Mr. Bonnet: Objection. That has no bearing on the question. 820

A. I do not know under what conditions. He may be ill; he may even have lost his vocation. Those are questions of a spiritual order. We enter in the domain of the supernatural.

x-Q. 228. Is it usual?

A. Oh! no, Sir.

x-Q. 229. It is even very rare?

A. Yes.

x-Q. 230. Could a secularization take place from a purely industrial object?

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A. Yes, Sir, by the permission of the Pope, for very grave reasons, yes.

x-Q. 231. What is the effect of the secularization?

A. It gives you your complete liberty.

x-Q. 232. Therefore the monk is liberated of his vows?

A. No, he is not liberated of his vows. He is still obliged to fulfill them, only he has more latitude, much more latitude.

822 x-Q. 233. What is the latitude that a secularized Carthusian may have?

A. From the point of view of temporal property, he can make use of same; he can possess, he can make use of temporal belongings.

x-Q. 234. Is Father Rey secularized?

A. Yes, Sir.

x-Q. 235. Do you remember the date?

A. It was in 1901.

x-Q. 236. In 1901?

823 A. Yes, I think so, Sir.

x-Q. 237. Can you tell us the object of his secularization?

A. Why, no, Sir.

x-Q. 238. You do not wish to say?

A. He became a secular in order to manage the business of the Grande Chartreuse as the law did not permit a monk to be proprietor.

x-Q. 239. So it was only for business purposes that he became a secular?

824 A. Yes, but for very grave reasons: in order to preserve for us our property which was much attacked.

x-Q. 240. Did you authorize him to become a secular?

A. It is not I who authorize, it is Rome.

x-Q. 241. It is the Pope?

A. Yes, Sir.

x-Q. 242. But is not the authority of the Superior necessary?

A. Yes, the consent.

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x-Q. 243. With the consent of the Superior ? And you gave it him ?

A. Yes, Sir.

x-Q. 244. What is the effect of this secularization as regards the secular Father with the Order ? Can he belong to a Chapter ?

A. No, Sir.

x-Q. 245. Up to what point is he excluded from the Order ?

A. He no longer belongs to the Order ; but he can 826 re-enter it later.

x-Q. 246. He can re-enter it ?

A. Yes, if he asks to do so.

x-Q. 247. But still so long as he is a secular he is no longer a member of the Order ?

A. He is no longer a member of the Order while he is a secular.

x-Q. 248. But he is held by his vows ?

A. Yes.

x-Q. 249. All his vows ? 827

A. Yes, Sir, except the vow of obedience, which is relaxed naturally.

x-Q. 250. He is absolutely released ?

A. He lives in the world ; he no longer obeys his superiors.

x-Q. 251. And the vow of poverty ?

A. Also. He can possess.

x-Q. 252. Then what is there remaining of his vows ?

A. There remains the vow of chastity, and obedience up to a certain point, for he is obliged to obey the 828 Bishop of the diocese.

x-Q. 253. Therefore he is under the Bishop and no longer on the Superior of the Convent ?

A. No, generally. He can ask for permissions of the Superior of the Convent if he wishes to do so. But he is not obliged as he is a secular.

x-Q. 254. Is the Order of the Carthusians subject to the Bishop ?

A. No.

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x-Q. 255. Is the Order subject to the Pope only?

A. Yes, Sir.

x-Q. 256. Therefore when a Father becomes a secular he leaves the domination of the Congregation, and finds himself, like other people, under the control of the Bishop?

A. Yes, Sir.

x-Q. 257. What name does he bear after the secularization?

830 A. He bears his legal name.

x-Q. 258. Did Father Rey again take his legal name when he became secular?

A. Yes, Sir.

x-Q. 259. What is his name?

A. His name? Marius Célestin or Célestin Marius Rey.

x-Q. 260. Is that his family name?

A. Yes.

x-Q. 261. Had he a name as a monk?

831 A. Yes, Dom Valéry.

x-Q. 262. He is no longer called, he should no longer be called Dom Valéry after the secularization?

A. He may be called in that way in memory of his former status of a Carthusian, but his name is the P. Rey or Abbot Rey.

x-Q. 263. You have said that a Father secularized could not be present at the Chapter. Did not Father Rey take part at a Chapter in Switzerland after his secularization?

832 A. No, Sir.

x-Q. 264. You are sure?

A. Yes, Sir. He may have gone to Switzerland to give information or to ask for permissions, or I do not know what, but he did not take part at the Chapter.

x-Q. 265. Where does he reside at the present time?

A. Father Rey?

x-Q. 266. Yes.

A. But I do not know. Now, at the present time, since I have no longer been at Farneta, I do not know.

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x-Q. 267. You do not know where he lives at the present time?

A. Where does he live at the present time? I have no longer been Superior General of the Order for a year, and I no longer attend to those who come in or who go out, or to my monks.

x-Q. 268. Then you do not know where he lives at the present time?

A. Yes, Sir, I know.

x-Q. 269. Well, where does he live? 834

A. He lives at Farneta.

x-Q. 270. With you?

A. I am no longer there. He lived there when I left. But where he is living at the present time I do not know.

x-Q. 271. Where is Farneta?

A. Near Lucca.

x-Q. 272. And you live at Pisa, I believe?

A. Yes, the Chartreuse of Calci, near Pisa.

x-Q. 273. The Father lives at the Monastry? 835

A. Yes, Sir, he lived at the Monastry, but to tell you that he lives there at the present time, I know nothing. I do not know where he lives at the present time. I am no longer the Superior of the Order. I know that when I was down there he lived there.

x-Q. 274. I am now asking you, seeing that you have already replied that you know where Father Rey lives at the present time, and that, since, you say you do not know exactly where he lives, which of these two replies is correct? 836

A. My reply is this: while I was at Farneta, yes, he lived there with me. But as I am no longer there I have no information about it.

x-Q. 275. Therefore you do not know where he lives at the present time?

A. In a positive way, no.

x-Q. 276. But you strongly suspect that he still lives at Farneta?

A. Yes.

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x-Q. 277. You have every reason to believe that he lives at Farneta?

A. Reasons, I have none for believing that he lives there or elsewhere, only I have not heard that he has changed.

x-Q. 278. He still lives then at the Monastry?

A. If he lives at Farneta he lives at the Monastry.

x-Q. 279. Is it to your knowledge that a Carthusian of Germany, named Schmid, of the Chartreuse of Hain,
838 has filed marks in Germany identical to those of Father Rey?

A. Yes, Sir.

x-Q. 280. By what authority did he make this registration?

A. It was in the name of his house, in the name of the Order.

x-Q. 281. And that mark, is it identical to that produced to-day?

A. Yes, Sir, identical to these (pointing out the
839 marks placed on the table).

x-Q. 282. And this liqueur shows that the liqueur is manufactured at the Grande Chartreuse?

By Mr. Bonnet: Objection. It has no relation to the question and is simply made in view of proceedings which are now pending before the German Courts.

x-Q. 283. It contains the words: "Liqueur fabriquée
840 à la Grande Chartreuse"?

A. Yes, Sir, by right this mark is ours.

x-Q. 284. And is it true that you manufacture at the present time at the Grande Chartreuse?

A. It is a question of knowing what is precisely understood by "Grande Chartreuse." It is not the buildings of the Monastry: it is the liqueur manufactured by the Carthusians, formerly at the Grande Chartreuse.

x-Q. 285. But this mark does not say "Liqueur fabriquée par les Pères Chartreux, formerly at the

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Grande Chartreuse" (liqueur manufactured by the Carthusian Fathers formerly at the Grande Chartreuse); this mark says: "Liqueur fabriquée à la Grande Chartreuse."

A. Nothing has been changed, this mark is ours. It is recognized as our property everywhere except in France.

x-Q. 286. And do you think that, whereas you no longer manufacture at the Grande Chartreuse and that you only manufacture at Tarragona, you have still the 842 right to make the public believe that you manufacture at the Grande Chartreuse?

A. Oh, the public is not deceived, it knows very well.

x-Q. 287. I ask that this question be repeated to the witness?

(The stenographer reads Question No. 286).

A. I have answered you. The public is not deceived 843 by it and knows very well that this mark is ours.

x-Q. 288. How do you know that?

A. Why by our agents.

x-Q. 289. And you think it is not leading the public in error—

A. (interrupting): No, Sir, no.

x-Q. 289A. —by putting on your bottles—whereas you only manufacture at Tarragona—a mark stating that the liqueur is manufactured at the Grande Chartreuse, whereas it is not you who manufacture at the 844 Grande Chartreuse, it is Mr. Cusenier.

A. It is the continuation of our liqueur, which was manufactured at the Grande Chartreuse, still the same, whereas that of Mr. Cusenier is not at all the same. We have the right to make use of this mark.

x-Q. 290. You pretend it is not the same, but do you know that that is not the opinion of everybody?

A. That is possible.

x-Q. 291. And let us suppose that the liqueur manufactured by Mr. Cusenier is in fact the same as that

845 manufactured by you at Tarragona, or that it resembles it so much that it would be difficult to distinguish them ; do you believe that you are not leading the public in error in making the public believe that it is you who manufacture at the Grande Chartreuse, whereas it is not you who manufacture there but Mr. Cusenier ?

A. No, no, we have still the right to make use of this mark. It is the same liqueur exactly, the continuation
846 of the liqueur of the Grande Chartreuse. But Mr. Cusenier! to admit the supposition that Mr. Cusenier manufactures the same liqueur as we do, it is impossible, it is impossible.

x-Q. 292. Have you not abandoned the mark which you produce to-day, and which is the object of these proceedings, in 1903 ?

A. We abandoned it in France, yes, as we can no longer produce in France, but not abroad.

x-Q. 293. Then why are you unable to make use of
847 this mark in France ?

A. Because the Liquidator has possessed himself of same.

x-Q. 294. But that is not any truer abroad than in France that you manufacture at the Grande Chartreuse ?

A. It is true, yes, indeed, and I am going to give you the reason for it : it is that it is always exactly the same liqueur which we manufacture at Tarragona, and on the other hand the marks are ours ; they belong to
848 us by right and we have the right to make use of them.

x-Q. 295. Have you never heard say that the Chartreuse manufactured at the Grande Chartreuse possessed a certain value on account of the plants harvested at the Grande Chartreuse ?

A. They say that, but all that is not true. Plants are gathered in the group of the Grande Chartreuse. At the Grande Chartreuse plants were cultivated round about the group but they are cultivated just as well elsewhere ; and even, I have said so at Chougnes, they

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are better beyond the Grande Chartreuse. But it was there the enclosure.

x-Q. 296. Have not the Carthusians spread the report among the public of the pretension that Chartreuse was of special value because of the plants which grew in the domain of the Grande Chartreuse ?

A. Not in the domain, but in the group. It is necessary to make the distinction.

x-Q. 297. You believe that the plants which live in the group of the Grande Chartreuse, on the side 850
exposed to the North, have the same value as the other plants which grow in the domain of the Grande Chartreuse itself ?

A. Yes, all the plants have the same value, provided that they grow at a certain altitude.

x-Q. 298. Therefore it is indifferent where you go to get the plants provided that they grow at a certain altitude ?

A. Nearly so, yes.

x-Q. 299. In spite of the differences in the exposure ? 851

A. Yes.

x-Q. 300. In spite of the differences of the soil ?

A. Yes.

x-Q. 301. In spite of the differences in the shelter ?

A. I am not an expert botanist, I would not be able to answer you that in a pertinent manner.

x-Q. 302. Do you not know that certain plants grow better when they are sheltered from the North wind ?

A. No, I have not studied those questions.

x-Q. 303. You believe that that has no importance, 852
where the plants grow ?

A. I do not think that it may not have any importance whatever but we have our confidential men who supplied us, and that was sufficient for us.

x-Q. 304. Who were your confidential men ?

A. Mr. Villard.

x-Q. 305. Mr. Villard ; did you rely upon him ?

A. Yes, Sir, and moreover we had our purveyors.

x-Q. 306. Do you believe that Mr. Villard knew

853 where the plants were harvested, the only one who knew it ?

A. Yes, I believe so.

x-Q. 307. He himself ?

A. Yes. I had confidence in him and I had my reasons for that. He is a man who knows the trade perfectly well. He knew where were to be found the plants which had the aroma and were useful for the manufacture.

854 x-Q. 308. It is above all the aroma of the plants that you sought for ?

A. Yes, the plants which have the aroma.

x-Q. 309. And you believe that Mr. Villard knew himself, of his own knowledge, where one ought to go to look for the plants ?

A. Yes.

x-Q. 310. Would you be surprised then to learn that Mr. Villard has declared that he does not know where the plants came from ?

855 A. But he had it done by others— I do not know ; it is he who supplied us.

x-Q. 311. Did the monks themselves, the Carthusian Fathers themselves, not do the gathering ?

A. Now and then.

x-Q. 312. They did not do it regularly ?

A. Yes, fairly regularly, when they went out.

x-Q. 313. Did they not do the gathering in the domain itself of the Grande Chartreuse ?

A. Yes.

856 x-Q. 314. In large quantities ?

A. Yes and no.

x-Q. 315. Is it not especially in the domain of the Grande Chartreuse that the wild plants were found—

A. (interrupting) : No.

x-Q. 315A. which you use ?

A. Naturally the Brothers of the Grande Chartreuse only gathered in the domain, they did not go out of it, but many of the people of the neighborhood brought us plants gathered in all the group.

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x-Q. 316. Did not the persons who pick the plants go to find them in the State domain?

A. I do not know.

x-Q. 317. You know that you are surrounded by forests which belong in great part to the State?

A. Yes, Sir.

x-Q. 318. Did not they go and gather the plants in the State domain?

A. To tell you that exactly, I know nothing of it. I well know that the plants were checked. 858

x-Q. 319. By whom?

A. By those whose business it was and who were entrusted with the manufacture.

x-Q. 320. Do you know how they checked them?

A. They examined them to see if they were really what were necessary, and the Brothers who were entrusted with the manipulation checked them also.

x-Q. 321. Do you know how they knew that the plant was of the desired origin?

A. Yes. 859

x-Q. 322. And they attached importance to the origin of the plants?

A. To the origin, no, but to the plant itself, and not to the place where it came from.

x-Q. 323. Were there not many peasants who attended to the gathering of the plants?

A. No, I think not.

x-Q. 324. Do you know who did the gathering, besides the Fathers?

A. It was persons who lived in the neighborhood. 860

x-Q. 325. Were these not peasants?

A. They were persons from St. Pierre de Chartreuse, in a word people of the neighborhood.

x-Q. 326. Therefore peasants?

A. Yes, and work-people.

x-Q. 327. They made a kind of trade of it?

A. Yes, Sir.

x-Q. 328. It was in fact a trade of harvesting plants?

A. Yes.

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x-Q. 329. Then they brought these plants to the Convent?

A. Yes.

x-Q. 330. You bought same from them?

A. Yes.

x-Q. 331. You have said that the origin of the plants was of no importance so long as these plants came from a certain altitude?

A. Yes.

862 x-Q. 332. Therefore one can gather these plants anywhere provided that they be from the desired altitude?

A. Yes.

x-Q. 333. You are sure of that, absolutely sure?

A. Why, yes, Sir.

x-Q. 334. Therefore one could just as well gather the plants in the Cévennes or in the Vosges as in the group of the Grande Chartreuse?

A. As in the Alps, yes, Sir.

863 x-Q. 335. Therefore there is absolutely nothing in the group of the Grande Chartreuse which can be of use to the gathering of the plants?

A. What is the meaning of your question?

By Mr. Kelly (to the Stenographer): Will you repeat the question? (The stenographer reads question No. 335).

A. There are some plants which grow in the group
864 of the Grande Chartreuse and which do not grow elsewhere, a few.

x-Q. 336. What are the plants which grow in the group of the Grande Chartreuse and which do not grow elsewhere?

A. I do not reply to that.

x-Q. 337. Why?

A. Because that would make known a part of the secret.

x-Q. 338. It is a very important question?

A. Yes.

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x-Q. 339. It is an essential part of the secret?

A. Essential, yes.

x-Q. 340. You cannot do without these plants?

A. No, Sir.

x-Q. 341. It is absolutely necessary that you have them?

A. Yes.

x-Q. 342. Is there one or are there several plants which only grow at the Grande Chartreuse which are indispensable to you for the manufacture of Chartreuse? 866

A. You say "at the Grande Chartreuse," but it is the entire group.

x-Q. 343. Well, I speak of the Group of the Grande Chartreuse?

A. Yes, Sir, there are some which are necessary to us.

x-Q. 344. How many?

A. Ah!

x-Q. 345. You do not want to say? 867

A. No.

x-Q. 346. There is more than one?

(Silence).

x-Q. 347. Can you tell me if there are several?

A. Evidently.

x-Q. 348. But I mean to say three, four, five?

A. No, Sir.

x-Q. 349. Not so many as that?

A. No.

x-Q. 350. You are not going to reveal the secret to me in replying to this question? 868

(Silence).

x-Q. 351. Therefore the plants coming from the Group of the Grande Chartreuse have a certain importance?

A. Some, yes.

x-Q. 352. An essential importance?

A. Essential, yes, in this way that one has never manufactured the liqueur without them.

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x-Q. 353. Why do you use the orangette in the fresh state ?

A. They are also used dried.

x-Q. 354. But you use them sometimes in the fresh state, Mr. Villard has also said so ?

A. Yes, also.

x-Q. 355. What is the utility of using same in the fresh state ?

870 By Mr. Bonnet : Objection.

A. I do not know, I do not manufacture myself.

x-Q. 356. For if you make an exception for the orangette then it may have a certain importance ?

A. Not at all, as one uses them in the dry state.

x-Q. 357. Sometimes in the dry state and sometimes in the fresh state ?

A. Yes, as one wishes : it is " *ad libitum.*"

x-Q. 358. One of your experts has told us that it
871 was absolutely impossible to use the material in the fresh state ?

By Mr. Bonnet : Objection. I ask to what passage in the testimony of the expert allusion is made ?

By Mr. Kelly : I speak of the testimony of Mr. Massignon, in which he said that if one used the plants in the fresh state the liqueur would be so diluted that it would not be of any use.

872 By Mr. Bonnet : Indeed Mr. Massignon did say that, but at this moment it is a question of the orangette, and the way in which the question is put leads the witness to believe that according to the expert it would be necessary for the orangette to be always used in the fresh state. That is the reason of my objection.

x-Q. 359. Will you now reply to my question, if you please. (Addressing the stenographer) : Will you repeat the question.

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x-Q. 360. Well, I ask you : was this expert right or wrong ?

A. He was right, Sir. One makes use of same in the dry state. But as to the orangette, that is not of any great importance.

x-Q. 361. Therefore it is possible to use the orangette in the fresh state ?

A. Yes.

x-Q. 362. Is it absolutely indifferent to make use of same in the fresh state or in the dry state ? 874

A. For that element, yes, but it is the only element for which it is a matter of indifference.

x-Q. 363. Therefore, according to you, all the other plants should be used in the dry state ?

A. Yes.

x-Q. 364. You are absolutely sure of that ?

A. Yes.

x-Q. 365. How do you reconcile the reply you made as to the importance of the origin of certain plants for the manufacture of Chartreuse and the reply which, 875 I think, you made to the question put by Mr. Bonnet : whether the origin of the plants was of any importance for the manufacture of the Chartreuse, to which question it seems to me you replied that the origin was of no importance ?

A. I do not know what your question is.

By Mr. Kelly (to the Stenographer) : Will you repeat my question.

(The Stenographer reads question No. 365.) 876

A. For almost all, there is some difference, very small; so small that it could be nothing.

x-Q. 366. You have answered Mr. Bonnet, if my memory is correct, that the origin was of no importance, that plants of all origins could be gathered provided only that they were got at a certain altitude, and that that was one of the secrets of Chartreuse ?

A. Oh, no !

x-Q. 367. Now you have just said that there are cer-

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tain plants which only grow in the group of the Grande Chartreuse, and that these plants are essential for the manufacture of the Chartreuse?

A. Have I told you that there were plants which only grew in the massif of the Grande Chartreuse?

By Mr. Kelly: That is what I understood.

By Mr. Bonnet: I did not hear the witness make that declaration and I ask that the pas-
878 sage be read in which he is said to have made this declaration.

(Stenographer reads questions 331 to 341 inclusive.)

x-Q. 368. Now I ask the witness to reply to my question.

A. Will you please put the question precisely?

x-Q. 369. Have you not said that the origin of the plants was of no importance provided that they were
879 gotten at a certain altitude. And now you just tell us—(to the stenographer): Will you continue the question?

The Stenographer (reading): Now you have just said that there are certain plants which only grow in the group of the Chartreuse and that these plants are essential for the manufacture of the Chartreuse?

x-Q. 370. I ask you to reconcile these two replies?
880 A. It is easy to reconcile them. There are plants which were only gathered in the group of the Grande Chartreuse. One only gathered them there. One did not go and gather them elsewhere. But these plants are to be found elsewhere; they are found elsewhere. The plants which grew in the group of the Grande Chartreuse were not gathered there only. For certain wild plants one only gathered them there. I tell you what was done.

x-Q. 371. Therefore now you deny what you have already said?

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A. Oh, not at all, I explain.

x-Q. 372. Therefore I must understand that now you pretend that there is no plant which only grows in the mountain group of the Grande Chartreuse which is necessary for the manufacture of the Grande Chartreuse? (*sic*)

A. My replies are clear.

By Mr. Bonnet: I make an objection as to the form in which the question is put. 882

By Mr. Kelly: It is my duty to indicate to the witness the answers that are irreconcilable. I only do my duty. Now it is the duty of the witness to reconcile the answers, or to say which of the two is the real answer.

By Mr. Bonnet: But it is my duty to point out the phrases which are constructed in a defective manner and which may lead to ambiguity.

By Mr. Kelly: I am opposed to any interruptions by Mr. Bonnet which are not justified or allowed by our laws. 883

By Mr. Bonnet: It is a question of French grammar here.

By Mr. Kelly: Not at all, we are before the American Consul, for an American trial.

By Mr. Bonnet: And we speak French.

By Mr. Kelly: That is possible. (To the stenographer): Will you repeat my question?

(The stenographer reads question No. 372). 884

x-Q. 373. I ask for an answer to this question.

A. There are plants which are gathered only in the mountain group of the Grande Chartreuse. This is what was done (I tell you what was done): They were found there, they were gathered.

x-Q. 374. Does one still gather them there?

A. It is Mr. Villard who is entrusted with sending us all the plants from France, exactly resembling those which we had, without any difference. I do not know

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where Mr. Villard gathers them, I do not go and watch him.

x-Q. 375. Have you never tried to substitute these plants, of which you have just spoken, gathered in the group of the Grand Chartreuse, by plants of the same nature coming from other parts?

A. It was done frequently I believe ; the question is not very clear to me.

886 (The stenographer reads question No. 375).

A. We made use of certain plants ; I do not know whether all were gathered in the group of the Grande Chartreuse. I do not know exactly where they were gathered. As a matter of fact a part were gathered in the group of the Grande Chartreuse and a part elsewhere.

x-Q. 376. I believe I have understood, Reverend Father, that the vow of poverty had for result the
887 placing of the members of the Order under the impossibility of possessing property ?

A. Yes, Sir.

x-Q. 377. And if by special authority they came possessed of any property, they were bound by this vow to give all the profits of this property to the Order ?

By Mr. Bonnet : Objection, as having no bearing on the question.

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A. I did not say anything like that.

x-Q. 378. I desire very much that there should be no doubt as to this question, and I beg of you to clearly explain to me the effect of the vows of poverty.

A. The vow of poverty, as I have said, is that one entirely renounces everything that he possesses and is subject to a superior.

x-Q. 379. But it may happen that a member of the Order might become an owner ?

A. By the permission of Rome, he may.

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x Q. 380. And in this case he owes all the revenues and all profits to the Order?

A. Yes, Sir; all.

x-Q. 381. He can keep nothing for himself?

A. No, Sir.

x-Q. 382. And in the case where he would die "ab intestat," what would happen?

A. I do not know what would happen.

x-Q. 383. But did you not have a system in order to avoid any bother which might result from a death "ab intestat"? 890

By Mr. Bonnet: I will ask for the annulling of these questions which have no relation to the trial.

By Mr. Kelly: I will establish the relation before I have done.

A. Yes, Sir; we did have one.

x-Q. 384. What was it? 891

A. Allow me not to let it be known, it is an affair of the Order.

x-Q. 385. Was not the system this: Did not the Father who might possess the property in question execute a transfer with the date left blank?

A. Yes, state precisely your question. I must say that this morning I had difficulty in understanding your questions, because they were not stated quite precisely, and I was extremely tired. I beg that you will put the questions very clear. 892

By Mr. Kelly (To the Stenographer): Will you repeat my question?

(The Stenographer reads question No. 385).

A. Those are questions which belong to the Order.

x-Q. 386. You do not want to answer?

A. I cannot, Sir.

x-Q. 387. A Father, who had in his name property belonging to the Order, was he not an interposed person?

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A. The Tribunal of Grenoble said so.

x-Q. 388. Yes, exactly, this person could not enjoy the revenues from the property, and if, according to some system, his heirs were not to have the property at his death, was he not certainly an interposed person?

A. That is the same question which you have just put to me.

x-Q. 389. But yourself, you have no need to have re-
894 course to a judgment of the Tribunal in order to reply to this question?

A. It is that I did not grasp it, I did not quite grasp the question.

(The Stenographer reads question No. 388).

A. Yes.

x-Q. 390. Has Father Grézier never been secularized?

895 A. No.

x-Q. 391. Has Father Garnier never been secularized?

A. No.

x-Q. 392. I do not exactly remember what you replied when I asked you whether the Fathers had not, for many years, declared that the liqueur manufactured at the Grande Chartreuse owed its value to the plants harvested in the group of the Grande Chartreuse?

A. The liqueur owes its value to the secret of manu-
896 facture. The secret of manufacture comprises many things; the plants and other things.

x-Q. 393. I ask you whether you have not put this pretention into circulation for many years, the pretention that the plants you harvested on the spot gave quite a special value to the liqueur?

A. No, Sir.

x-Q. 394. You have never pretended that?

A. I do not think so.

x-Q. 395. But you are sure of it?

A. I do not know what is going on at present.

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x-Q. 396. But while you were Superior General?

A. Oh! no.

x-Q. 397. Because I am going to summon a crowd of witnesses who are going to say so.

A. Well, they are going to say so.

x-Q. 398. In spite of that you declare that the Carthusian Fathers have never put this pretention into circulation?

A. No.

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x-Q. 399. Never, sure?

A. That suffices, what I have answered you.

x-Q. 400. You cannot be sure?

A. I beg your pardon.

x-Q. 401. You are absolutely sure of it?

A. What I have answered you suffices.

x-Q. 402. Therefore you are sure?

A. Yes, I have already answered you several times about it.

x-Q. 403. Unfortunately it is my duty to state precisely, especially when it concerns questions as im- 899
portant as that. You are sure?

A. Yes, Sir.

x-Q. 404. In the memorial which you sent to the Chamber, in reply to the statement showing cause, you have made a distinction between the first edition of Mr. Pascal, of 1873, at the time Mr. Pascal was doctor at the Grande Chartreuse, and a subsequent edition, at a time when he was no longer doctor to the Carthusians?

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A. Yes, Sir.

x-Q. 405. You have said that the first volume was worthy of confidence, whereas the last edition was not?

A. Yes, Sir.

x-Q. 406. Has not the valley of the Chartreuse always been renowned for its plants?

A. Yes, Sir, it was believed for a long time, one believed that the plants growing on the group were necessary. As a matter of fact we no longer believe it.

x-Q. 407. Since when have you made the discovery

901 that the plants of the Chartreuse were no longer worth anything for the manufacture?

A. I do not say that they are no longer worth anything.

By Mr. Kelly: Ah!

A. I say that the plants of the Chartreuse itself, taken in the valley, where they are usually gathered,
902 are not necessary.

x-Q. 408. At what time did you make this discovery?

A. I do know exactly.

x-Q. 409. But about?

A. I cannot tell you exact times.

x-Q. 410. I do not ask you for exact times, but about?

A. I do not know. I have not got that in mind. A pretty long time ago.

x-Q. 411. Is it ten years ago?

A. Perhaps, perhaps more.

903 x-Q. 412. Twenty years?

A. I cannot state precisely.

x-Q. 413. We are going to state precisely: that is why I asked you to state precisely yourself?

A. I do not know, as for the date I do not know.

x-Q. 414. But you insist that, for a considerable time, you have made the discovery that the plants of the Chartreuse were no longer indispensable for the manufacture of Chartreuse?

A. Yes, Sir, that was discovered.

904 x-Q. 415. But you cannot state precisely the date when you discovered that?

A. No.

x-Q. 416. Mr. Pascal speaks often of the plants of the Chartreuse: especially page 85, I read the following extract:

"No longer being able to get the product of
"the forests, they (that is to say the Carthu-
"sians) have sought to utilize the aromatic plants

905

" which grow abundantly among the rocks, in
" order to make a precious elixir and an excel-
" lent table liqueur."

Then again, page 227, he quotes a certain quantity of plants with the Latin name, and he says :

" These two plants are very aromatic. The
" Romans purchased at their weight in gold the
" extract taken from their roots." 906

Then again, page 246 :

" Here (that is to say at the Grande Char-
" treuse) the vegetation is of remarkable vigor,
" and the flowers acquire a largeness and a fresh-
" ness of color which those of the flat do not
" possess."

Do you acknowledge the correctness of these quotations? 907

A. All that is not of a mathematical correctness.

By Mr. Bonnet : What is the edition of this work ?

By Mr. Kelly : 1873.

x-Q. 417. You have acknowledged, I think, that the plants vary from year to year?

A. Yes. 908

x-Q. 418. In aroma I mean to say ?

A. Yes.

x-Q. 419. But you have said that you had, in spite of that, a formula which was immutable ?

A. Yes.

x-Q. 420. You have said that that was precisely the secret of the Carthusians ?

A. It is our secret to always make the same liqueur, however the plants may vary in aroma.

909

x-Q. 421. But for that is it not necessary to change the proportion of plants?

By Mr. Bonnet: I ask the witness not to answer.

x-Q. 422. You are free to answer.

By Mr. Bonnet: I ask the witness not to
910 answer.

x-Q. 423. I insist on this question. The answer to this question cannot reveal the secret of the Carthusians?

(No answer).

x-Q. 424. No?

(No answer).

x-Q. 425. You acknowledge it?

(No articulated reply).

911 By Mr. Kelly: I most strongly protest against Mr. Bonnet's interruptions of the witness, which are only made in order to warn the witness, and I say that I will cancel the whole of the testimony of the witness if he does not reply to this question and to the questions about the secret which I will put, and which are not of a nature to reveal the same.

By Mr. Bonnet: In spite of the attitude of Mr. Kelly I insist on the witness not answering,
912 whatever may be the form of intimidation which he made use of.

By Mr. Kelly: (to the Stenographer): Will you repeat the question?

(The Stenographer reads Q's. 417-423 inclusive).

x-Q. 426. You acknowledge it?

A. What?

x-Q. 427. That the reply to this question cannot reveal to me the secret of the Carthusians?

913

A. Partly.

x-Q. 428. What part?

A. Why the proportioning for instance.

x-Q. 429. I do not ask you for the proportioning.

A. You ask me if it is necessary to increase the proportion of the plants.

x-Q. 430. I ask you this question: whether, in view of the variation of the plants, it is not indespensable to alter the proportions you use of the plants, according to the variations from season to season? 914

A. I think it would be indiscreet on my part to answer.

x-Q. 431. But your answer is fatal.

A. How fatal?

x-Q. 432. Why, there is only one reply: that it is necessary to alter it.

A. But I make no answer; it is you who make it.

x-Q. 433. But I am trying to avoid the inconveniences for you of your refusa to answer. I do not ask any question of a nature to cause you to reveal your 915 secret, but I have the right to put certain questions to you of such a nature as to prove to me that you have no secret. That is my right.

A. Yes, Sir.

x-Q. 434. Then I ask you once again to answer this question?

A. I cannot because, I have told you that, it is a portion, a small part of the secret.

916

By Mr. Kelly: The Court will judge.

x-Q. 435. I suppose that during a season you will find it impossible to harvest one of the plants of which you make use; would you be obliged to abandon the manufacture of Chartreuse?

A. No, because we have some in store.

x-Q. 436. You have some in advance?

A. They are dry.

x-Q. 437. And you carry them over from year to year?

917

A. That is a thing known to us but which I must not make known.

x-Q. 438. It appears from enquiries which have been made that it was only in 1833 that you began to apply yourselves to the manufacture of liqueurs. Is this date correct according to your memory?

A. I have no remembrance of this date exactly.

x-Q. 439. But nearly so?

A. No, I have no remembrance as to the date.

918 x-Q. 440. But about, when did you begin to make the liqueurs?

A. Before putting them on the market?

x-Q. 441. Yes?

A. Yes, before, because we manufactured them first for ourselves.

x-Q. 442. When did you begin to supply the trade?

A. A half a century about.

x-Q. 443. About 1850?

A. Well, yes, but I have not gotten these dates in
919 my mind.

x-Q. 444. I ask you these dates only approximately. Do you remember what was the first liqueur you made?

A. The first liqueur must be the green liqueur.

x-Q. 445. Are you sure that it was the green liqueur?

A. I have always heard so. I do not know whether it is true; I was not there at the time.

x-Q. 446. You do not know then that it was the white liqueur which was the first?

920 A. I do not know.

x-Q. 447. Do you remember the first name which was adopted?

A. Chartreuse.

x-Q. 448. You think it was called, the first liqueur that was made, "Chartreuse"?

A. I believe so.

x-Q. 449. There was no other name?

A. I do not remember the name; I was not there at the time.

921

x-Q. 450. Have you ever heard of a liqueur which was called "Mélisse"?

A. Yes.

x-Q. 451. Was it called "la Mélisse"?

A. I think so—why no, I am not sure; I cannot testify about those things which happened a long time before my time. I have not studied those questions in any particular manner. I only occupied myself with what passed in my time.

x-Q. 452. Who is it, in the Order, who knows these 922
details?

A. I do not know, the old members of the Order.

x-Q. 453. You do not believe that there is at the present time any Fathers who would know these details?

A. Oh, yes, indeed.

x-Q. 454. Which ones, for instance?

A. The Superior General, who must know that.

x-Q. 455. The present Superior General?

A. Yes, the Superior General at the present time, 923
who was in the Order long before me.

x-Q. 456. Do you know what was the color of the "Mélisse"?

A. No, Sir, I have never seen any.

x-Q. 457. Have you never heard how the Mélisse was sold at the beginning?

A. No, I believe that it was taken to Grenoble, I believe so.

x-Q. 458. It was taken to Grenoble?

A. I believe so, in a very little quantity. 921

x-Q. 459. Two litres per day?

A. Oh, I do not know, I know nothing about it.

x-Q. 460. Was the Mélisse still the same liqueur as that which you manufacture to-day?

A. I do not know. I believe so.

x-Q. 461. You do not know about it?

A. I have always believed so.

x-Q. 462. That it was the same formula?

A. Yes, Sir.

925

x-Q. 463. That one made use of the same formula as now, that the formula has never been changed ?

A. That is to say there are three sorts of liqueurs : the green, the yellow and the white which is no longer made now, but one has always used the same formula, always, always.

x-Q. 464. The same formula for the three ?

A. Yes.

x-Q. 465. You have said, in reply to Mr. Bonnet,
926 that the manufacturing was done at the Grande Chartreuse and at Fourvoirie ?

A. Yes.

x-Q. 466. Has the manufacturing been done at the Grande Chartreuse lately ?

A. What do you call lately ?

x-Q. 467. During the ten years before your departure from the Grande Chartreuse ?

A. The manipulation of many plants was done at the Grande Chartreuse.

927 x-Q. 468. At the Grande Chartreuse itself ?

A. Yes, Sir.

x-Q. 469. And that was done up to the time of your departure at the Grande Chartreuse itself ?

A. Yes, Sir.

By Mr. Kelly : I am going to ask the stenographer to read to us the answer you gave to the question : How do you reconcile the pretention set forth in your petition to the United
928 States that the Order of the Carthusians was proprietor of the mark of the Chartreuse, with the note or memorial that you sent to the Chamber, in reply to the statement showing cause of the bill relative to the request for authorization made by the Congregation of the Carthusians ?

(The Stenographer reads direct question 30 and answer).

x-Q. 470. Do you maintain this answer ?

929

A. Yes, Sir.

x-Q. 471. It was therefore only at the time of your request for authorization that you consulted your Counsel ?

A. I beg your pardon, Sir, long before. Upon my word, you know very well that a monk could not be proprietor in the eyes of the law. An Order could not be proprietor in the eyes of the law. Our counsellors had advised us to place our property in the name of a monk.

930

x-Q. 472. Do you remember when you decided to take this step ? Already a fairly long time ago ?

A I do not know. A fairly long time ago, much before that.

x-Q. 473. Directly after you returned to France, was it not ?

A. Ah! Sir, I do not know. On our return to France war was not declared on the monks as it is now. The laws against the monks were not established as they are now.

931

x-Q. 474. But there was a law against the Congregations ?

A. At the time of our return to France ?

x-Q. 475. At the time of your return to France. You know that the law passed during the Revolution, which rendered any religious association void was in vigor when you returned to France ?

A. Yes, Sir, but we were authorized to return.

x-Q. 476. That is to say you pretended that you were authorized to return there ?

932

A. The State treated with us.

x-Q. 477. And it was precisely this question that you discussed in your memorial ?

A. Yes.

x-Q. 478. Did the Chamber give you satisfaction ?

A. No, the Chamber voted against us.

x-Q. 479. And declared that you were not authorized ?

A. Yes, one vote.

x-Q. 480. You say in your answer that, for you and

933 for all the members of the Congregation, it was the Congregation that was the owner of the mark?

A. Yes, Sir.

x-Q. 481. Did you not assert the contrary?

A. On the advice of my attorneys.

x-Q. 482. For a long time was it not?

A. While we were in France.

x-Q. 483. During the whole time you were in France?

A. Except when the Tribunal of Grenoble con-
934 demned us.

x-Q. 484. It was not when you filed your request that you adopted this system. It was adopted previously?

A. In my eyes the Order was always the owner and has always been the owner.

x-Q. 485. Convinced that the Order was the proprietor of the mark, you did not hesitate to say, in the memorial which you sent to the Chamber, as follows:

935 "The Prime Minister reproaches us for not "having added to our contemplative titles that "of manufacturers, in setting forth in the list of "properties of the Congregation the marks of "the liqueur called "Chartreuse"; the reply, "gentlemen, is very simple. If we have not put "down this mark in the list of our properties it "is because it does not belong to us."

A. Yes, in the eyes of the law.

936 x-Q. 486. You did not say "In the eyes of law."

A. That is understood, we were addressing the Chamber.

By Mr. Kelly: You continue:

"It is the property of Abbé Rey, who acquired "the 20th November, 1897, from Father Grézier, "the preceding proprietor, who himself had it "from Father Garnier, according to an authentic "act received from Maitre Sourd, in 1871. This "absolutely personal property has been re-"cognized, proclaimed and confirmed by numer-

937

" ous judgments and decrees rendered both in
" France and abroad. There is a European
" jurisprudence of fifty years constantly affirm-
" ing in the most authentic and most exact man-
" ner that the mark of the liqueur called
" Chartreuse is not, whatever the imitators may
" say, the property of the Congregation of the
" Carthusians, but really an individual and pri-
" vate property."

938

x-Q. 487. Are those really the words which you used ?

A. Yes.

x-Q. 488. And it was not true ?

A. Beg your pardon, Sir. In the eyes of the State that fiction was needed, because that was the French jurisprudence on the congregations.

x-Q. 489. But it was not the State that made that fiction. Was it not you who made it by passing acts before a notary by which you transferred the property 939
to private persons belonging to your Order. Was not that the fiction ?

A. We did in that matter what our counsels told us to do. Nothing else. But for me, as for all the Order, the property, we are convinced, and that is a certain thing, belongs to the Order.

x-Q. 490. And do you believe that if your Counsel tells you to declare an inaccuracy that you ought to do so ?

A. It is not an inaccuracy, as the State would not 940
recognize our property, it would only admit of a private and particular proprietor.

x-Q. 491. But on the contrary, was it not at this time that the State declared openly that it was you who were the proprietors ?

A. Yes, it did so. It said that we were right before the Tribunal of Grenoble ; it said we were right.

x-Q. 492. And at the moment when the State declared that you were the proprietors you pretended that you were not ?

941

A. It was not at the same time.

x-Q. 493. But at the time when you made this memorial, is not this memorial a reply to a statement showing cause issued by the Government, which declared that you were the proprietors?

A. I no longer remember what it was a reply to.

x-Q. 494. I am going to call the statement showing cause ("exposé des motifs") to your memory. The project of the law, which is numbered 558, Chamber
942 of Deputies, 8th Legislature, Session extraordinary of 1902, commences by reproaching you with not having included the factory of the Grande Chartreuse in the list of properties which you produced with your request, and states as follows. After having summed up the memorandum made by you, of your properties, it states:

"So a way that the properties occupied or
"possessed by the Carthusians represent a
943 "venal value of 1,865,300 francs. It would be
"difficult, moreover, to understand how, with
"such limited revenues as those indicated by
"the list produced by the Prior, the Carthusians
"would be able to give alms and donations of
"all kinds which is the cause of the favorable
"opinions of the Municipal Councils of the
"Canton of St. Laurent du Pont.

"It therefore clearly appears that the list of
"properties and resources produced, as moreover
944 "the statutes themselves, do not apply to the
"true Congregations of the Carthusians, but has
"simply been made up in view of giving an
"appearance of satisfaction to the Law of the
"first of July, 1901. It suffices to convince
"one of this to remark that the incumbent of
"the lease quoted in the statement of proper-
"ties, fixtures and buildings of the Congregation
"—a lease which has not been produced but
"which, according to indications furnished by
"the Minister of Finance, is dated September

945

" 1st, 1901, that is to say posterior to the Law
" of the 1st of July, 1901, and covers not only
" the marks of the liqueurs but also the con-
" structions pertaining to their manufacture—
" is no other than Father Valery Rey who, as
" Procureur of the Grande Chartreuse, consulted
" in the month of August, 1901, the Govern-
" ment on the legal situation of the Carthusians,
" and who has become Abbé Rey by virtue of a
" pretended secularization. But it results from 946
" a document which I annex to the papers in this
" case that on the 26th day of September, 1901,
" the branch office of the Credit Lyonnais at
" Geneva paid over to Mr. Rey the sum of one
" million francs, of which 400,000 francs were in
" gold and 600,000 francs in bank notes. This
" money, previously sent by the Credit Lyon-
" nais from Paris, was paid in the same day to
" the Geneva banking firm of Pictet & Cie., 12
" Rue Petitot. 947

" The object in view was therefore perfectly
" clear: to conceal the real resources of the
" Carthusians and to present to the French
" Government a sort of small Congregation
" only, purely contemplative, in view of obtain-
" ing an authorization permitting the Carthu-
" sians to retain the landed property conces-
" sions which were made to them in 1816 and in
" 1857, as well as their commercial undertakings
" which, in appearance, are presented as being 948
" quite foreign to the Congregation, except to
" have them revived when the time would be
" judged to be more favorable."

Yourself, you quote this clause in your memorial, page 9:—

" A second complaint is thus made by the
" President of the Counseil. After having said
" a few words about our statutes: ' It therefore

949 " seems,' he adds, ' that it is a question of a
" ' purely contemplative Congregation. There
" ' is no mention whatever as to the com-
" ' mercial undertaking which however has
" ' brought the renown and wealth of the
" ' Carthusians.' And further on : ' It therefore
" ' clearly appears that the list of properties
" ' and resources produced, as moreover the
" ' statutes themselves, do not apply to the real
950 " ' Congregation of the Carthusians, but have been
" ' established solely in view of giving an appear-
" ' ance of satisfaction to the Law of the first of
" ' July, 1901.' "

It is in reply to the accusation of the Government that you were concealing your credit that you replied: "No, the assets do not belong to us." Therefore it was not simple fiction as a result of the fault of the State. It was you was the author of the fiction, and
951 it was in answer to the presumptions of the State that you maintained that these properties did not belong to you and belonged to Father Rey, were the private property of Father Rey.

A. We did in that exactly what our Counsellors told us to do.

x-Q. 495. It is possible that, from your moral idea, is sufficient but before the American Courts it is not the same.

952 By Mr. Bonnet : I make an objection as to the way the examination is conducted, an examination which is made more in the form of a polemic, and which even reaches abuse, than a pure and simple examination such as the American law wishes.

x-Q. 496. Besides, it is not only before the State that you have pretended you were not the proprietors. Have you not sustained, on several occasions, before

953

the Courts, that you were not the proprietors of the marks?

A. Sir, our attorneys told us to do what we did.

x-Q. 497. Your Counsellors are your proxy?

A. They are our Counsellors.

x-Q. 498. I have no need to tell you: "Qui facit peralium facit per se" (that you are responsible for what your Counsellors do.) You quote yourself this jurisprudence, you say:

"That it suffice for me to quote here the considera- 954
"tions of two judgments rendered, one by the Tribunal
"of the Seine, the other by that of Grenoble. In a
"trial brought before the Civil Tribunal of the Seine,
"Father Grézier was opposed to a first exception
"based on this: that he did not act in his own per-
"sonal name, but in the name and as *Procureur* of
"the Convent of the Grande Chartreuse, which being
"an unauthorized religious community, cannot ap-
"pear in a court of justice. Here is the reply of
"the Tribunal, (June 30th, 1880): 955

> "Whereas, it states, Grézier acts in the present instance, not in his name and quality of brother, but in his personal name * * * that he has a personal and direct interest in the cause in hearing, as it is really he who is the proprietor of the mark, of the label and of the name, &c., * * * that it could not be asserted that his calling of monk, member of a Congregation, should be a cause of "forfeiture" 956 and placing him outside of the common law; that if indeed under the ancient rule the convents absorbed the individual who by taking the vows left civil life, it is no longer so since the Law of the 13th February, 1790; that the effect of this law being to no longer consider the religious vows as forming a legal tie and has been the means of placing the monks under the power of common law, and permitting them, at the same time they enter the cloisters, to retain

957 their civil and political rights, only responsible of their vows before their conscience; that thus Father Grézier, like any other citizen, has the right to possess, to enter into business, and has quality to appear in a Court of Justice in order to set forth and to defend the rights he may have, &c. * * * "

It appears to result from this decision that your
958 attorneys have upheld that Father Grézier was the proprietor of the marks, and that, in fact, he had the right to possess and to carry on business.

A. He did so for the Carthusians, for the profit of the Carthusians.

x-Q. 499. But one could say that Father Grézier was an interposed person, that is to say a person of whom you made use in order not to come within the effect of the law. You did not want to accept this system in your memorial. You continued:—"A second excep-
959 "tion was based on Father Grézier being an inter-
"posed person, acting in the interests of a Congrega-
"tion."

The Tribunal of the Seine replied:

"WHEREAS it results from the preceding that
"he (Father Grézier) acts in a personal interest,
"since he still remains proprietor of the
"mark and the accessory rights, that if he
"does not disavow that he allows the Congre-
960 "gation of which he is a member to profit by
"the benefits produced by the commercial
"working guaranteed by his mark, it does not
"follow that he be not the proprietor, and that
"he does not really carry on his business in
"his proper name: he has so well preserved
"the property of the mark concerned and the
"benefits that he gathers from the same, that if
"he were to die '*ab intestat*' his fortune would
"go to his heirs, or to the State in the event of
"want of succession. It is certain that he can

961 " make what use of his property he likes; that
" no one has the right to ask a reckoning of him,
" if he remains within the terms of the law,
" and if, as he does, he enjoys his property ac-
" cording to his wish, that is to say by using it
" for the benefit '*ut singuli*' of the companions
" of his religious life; that to maintain the con-
" trary would be to disavow the principles
" of individual liberty and of property; that
" these principles are the same whether it con- 962
" cerns a recognized or non-recognized religious
" Congregation, etc."

It seems to result from this judgment that your lawyers maintained that Father Grézier was not an interposed person, that he had retained not only the property of the mark but also the profits that he might draw therefrom, and that if he should die "*ab intestat*" his fortune would pass to his heirs or to the State in the event of the want of succession. How do you 963 reconcile the pretentions of your lawyers in this matter with the evidence you have given here about the vows of poverty?

A. That was a thesis that could have been, that should have been maintained, in the opinion of our Counsellors. We should have maintained it before the French Courts and it was justified before the French Courts. But in reality Father Grézier was a monk like me and could not possess.

x-Q. 500. It is not only your lawyers who put for- 964 ward this pretention, you yourself adopted these pretentions; you have rendered them your own by quoting them in the memorial that you communicated to the Chamber?

A. Yes, Sir, speaking to the Chamber I was obliged to speak its language, and that was by the advice of our lawyers.

x-Q. 501. To make declarations which were contrary to your own convictions?

A. I did it much against my inclination.

965

x-Q. 502. It might even be claimed that the persons who were at a certain time the nominal proprietors of your mark were but your proxies. But you have also refused that system, since you have maintained before the Grenoble Court, and the Tribunal of Grenoble declared you in the right on the 1st August, 1885, in its decree thus worded:

"Whereas, replies the Tribunal, the position
966 "of Procureur taken by Grézier in the cases of
"seizure and assignation should not be con-
"sidered as implying the idea of a warrant,
"that it constitutes purely and simply a dig-
"nity and a monastical function, which would
"not, relatively to third persons at all
"events, modify the nature of his rights;
"that the fact of belonging to an unauthor-
"ized religious congregation does not de-
"prive the person who belongs to same of the
967 "right of maintaining the actions in law which are
"his own, for if the unauthorized religious
"communities have no legal existence in France
"each of their members nevertheless preserves
"his individual rights in integrity; that Grézier
"has therefore incontestably the right to make
"what use he likes of this property without
"other persons calling him to account."

And after having quoted this jurisprudence you add
968 the following commentary:

"You see, Gentlemen, that the jurisprudence
"of the Courts establishes in a precise and
"formal manner that the mark of the liqueur
"is a personal property, and that if the pro-
"prietor is willing to give a part of his profits
"to the Congregation to which he belongs it
"could not be concluded from that that he was
"an interposed person."

969

You have therefore maintained that the Reverend Father Grézier was not an interposed person but that he was truly the owner of the mark, and that in consequence the Order of the Carthusians was not?

A. In the eyes of the law.

By Mr. Bonnet: Will you allow me to make an objection, Mr. Kelly. You make a quotation, it would be interesting to make the whole of it. You have left out the last phrase. 970

By Mr. Kelly: I will read it. The memorial has 24 pages. Would you like me to read it from the beginning to the end?

By Mr. Bonnet: You made a quotation which contains 15 to 20 lines; you read 18 of them and you left out two.

By Mr. Kelly: What importance have those lines which you wish to add? Will you read them and tell me what may be the importance so far as concerns the question that I am dis- 971 cussing.

By Mr. Bonnet: I read the omitted phrase:—

"And that whatever community of interest
"there might be between him (Father Grézier)
"and the other monks of the Convent of the
"Grande Chartreuse, he is nevertheless in strict
"law with regard to third persons the exclusive
"proprietor of the trade marks."

By Mr. Kelly: Quite so. That is just what I am reproaching the witness with: that he and 972 his lawyers have maintained before the Courts that not only he was the owner with regard to third persons, but that he was also the owner with regard to everybody, because he insisted that he was not an intervening person. You continue:

"The statement showing cause passes over in
"silence a jurisprudence going back to 1853,
"and constantly upheld since—a status conse-
"crated by fifty years at least of judicial decis-

973 " ions—and confines itself to declaring that, " contrary to this proclamation in France and " abroad of an individual ownership of trade " marks and business, it is the property of a " Congregation which is in evidence. A simple " declaration without proof cannot prevail " against this unanimous jurisprudence.

" Has not the Administration itself recognized " this property when Abbé Rey became by an
974 " authentic act of 20th November, 1897, pro- " prietor of the good-will and the mark, the " Administration of the Registration brought " forward the insufficiency of the good-will— " demanded a higher valuation—experts were " appointed, a compromise intervened between " the Administration and Abbé Rey, who paid " down more than 200,000 francs as rights of " transfer. Can the State disavow a private " property for establishing which it has received
975 " such a sum.

" Has not the present Administration recog- " nized the same right of individual property in " admitting after minute enquiry, that the profits " produced by the business of Abbé Rey should " not be taken into consideration to fix the tax of " 4% due by the religious Congregations, and " that the registration had not the right to con- " sider those profits as belonging to the Congre- " gation of Carthusians ? This decision is based
976 " both on the foregoing jurisprudence and on the " Act of 20th November, 1897."

x-Q. 503. Ought I not to conclude from this phrase that you have not paid the Tax of Augmentation of 4% which was due to the Excise on the properties belonging to a Congregation ?

By Mr. Bonnet : Objection. Has no relation with the case.

977

A. Moreover, Sir, I had totally forgotten this. We have paid so many taxes to the Government in all sorts of ways that I had forgotten that.

x-Q. 504. As a matter of fact you know that there is a tax called "Droit d'accroissement" which is 4% upon the properties of Congregations ?

A. Yes.

x-Q. 505. It is a kind of mort-main tax ?

A. Yes.

x-Q. 506. By placing these properties in the name 978
of Mr. Rey you avoided the payment of these considerable taxes, did you not ?

A. We have paid enormously.

x-Q. 507. I ask you if you paid these "droits d'accroissement" of 4% ?

A. I replied to you : I do not remember if we paid those taxes in particular, but we have paid a lot to the Government. We have paid exorbitant sums.

x-Q. 508. But you paid what all manufacturers, all
distillers, pay ? 979

A. That is possible.

x-Q. 509. It is much below 4% ?

A. I do not know.

x-Q. 510. You do not know ?

A. No, I do not know.

x-Q. 511. And for the real estate properties that the Order of the Carthusians possessed, and which were in the name of private persons, did you not avoid by this system the payment of the *Droits d'Accroissement ?*

A. Not at all. 980

x-Q. 512. On the real estate ?

A. Not at all, we paid taxes—I no longer remember for what—but we paid many taxes.

x-Q. 513. Yes, but all proprietors pay taxes. But did you not make a considerable economy ?

A. Oh, no, Sir.

x-Q. 514. On the Revenue ?

A. We were made the most of.

x-Q. 515. I do not ask you if you were made the most of ; we are all made the most of by the Treasury.

981 But I ask you whether you were not made the most of in a less considerable proportion by putting your property in the names of private persons than in putting same in your own name ?

A. I do not think so.

x-Q. 516. You do not think so ?

A. No.

x-Q. 517. Indeed, you state yourself that the Treasury has not claimed the tax of 4% which it should
982 have claimed if these properties were properties of a religious congregation.

A. I do not remember.

x-Q. 518. That results from your memorial ?

A. Sir, I do not remember the terms of our memorial.

x-Q. 519. Do you doubt the correctness of my quotations ?

A. No, I have not got them.

x-Q. 520. Because I would offer you the document if you like.

983 A. I thank you.

x-Q. 521. You have no need of it ?

A. No.

x-Q. 522. Therefore you recognize the correctness of my quotations ?

A. Yes, Sir.

x-Q. 523. You continue as follows :

" The statement showing cause values at
" 1,865,300 francs the properties occupied or
984 " possessed by the Carthusians, being based on
" information furnished by the Minister of
" Finance under date of April 7th, 1902. It
" indicates that these properties would be
" settled on the head of certain monks or that
" of third parties. Can a complaint be made
" against us for not having included in the
" properties of the Congregation the personal
" properties of the members of the Congrega-
" tion, who are not incapable of being proprie-
" tors in their personal name, and the properties

985

" belonging to third parties, when there is noth-
" ing to show that these different proprietors
" are interposed persons, when above all the
" law of July 1st, 1901, which has enacted some
" presumptions of persons being interposed, has
" not a retroactive effect.

" Our declaration regarding our properties
" has therefore not been made with the idea of
" fraud as to the law of the 1st July, 1901."

986

Does not your testimony to-day seem to establish that, in reality, this declaration regarding your properties was a fraud on the law of the 1st July, 1901?

A. But I beg pardon, we no longer possess anything in France.

x-Q. 524. But at that time? You say that you possessed the mark. You say in the United States that you possessed the mark?

A. Yes, Sir.

x-Q. 525. To-day you declare that at that time you 987
possessed the mark, and in spite of that you did not enter the same in the note you added to your request for authorization.

A. The Tribunal of Grenoble undeceived us, if we were deceived.

x-Q. 526. I do not ask you what the Tribunal of Grenoble decided; I refer to the date when this memorial was made. You here declare that your declaration regarding your properties was not inspired by any thought of fraud on the law of the 1st of July, 1901? 988

A. Yes.

x-Q. 527. But I ask you: As the law of 1901 compelled you to produce to the Government a true statement of your properties, at this time, and as you say to-day that you were at that time proprietors of all the foreign marks, was it not a fraud on the law not to include them in the statement of your properties which was annexed to your request for authorization?

A. As to that we did all that our Counsellors told us to do.

989

x-Q. 528. That is to say you put the burden of this act on your Counsellors?

(The witness makes an affirmative sign of the head).

x-Q. 529. Act which I may say affirmative?

A. Yes, Sir.

x-Q. 530. Will you tell me from where the "Chartreux" (Carthusians) took their name?

A. They took their name from the place, from the Grande Chartreuse, because they lived at the place.

990 x-Q. 531. Therefore, if I understand you well, the Carthusians took their name from the valley of the Chartreuse, which, in Latin, was "Carturissium"?

A. Cartusiam.

x-Q. 532. I mean to say the name of the Chartreuse at the time of the Romans. You do not remember?

A. No.

x-Q. 533. I quote "La Grande Chartreuse par un Chartreux," a book sold by you, I believe?

A. Yes, Sir.

991 x-Q. 534. And which says:—

> "The valley of the Chartreuse takes its name "from the village of Saint-Pierre de Chartreuse, "in Latin 'Carturissium.' One formerly said "'Chartrousse' or 'Chartrosse,' a pronuncia- "tion which is still found in the words 'Chart- "roussette' or 'Chartrossette' names desig- "nating small dales covered with pastures and "woods."

992

That is to say that the Carthusians have taken their name from the valley of the Grande Chartreuse?

A. Yes, Sir, they established themselves there.

x-Q. 535. Father Rey became proprietor of the foreign marks, did he not?

A. Yes.

x-Q. 536. He had all the marks registered abroad in his name?

A. Yes.

x-Q. 537. In England?

993

A. Yes.

x-Q. 538. In Germany?

A. Yes.

x-Q. 539. Why did he not do it in the United States?

A. Because he was told that it was not necessary.

x-Q. 540. You possess, or you possessed before the law of 1901, many buildings, which were in the names of private persons, did you not, of interposed persons, like the trade mark?

994

A. Yes, Sir.

x-Q. 541. Many? The report made by the Commission in the Chamber says that you have buildings amounting up to 5,386,030 francs?

A. That is possible; I do not know.

x-Q. 542. When the business was transferred to Father Rey, you valued it, for the purpose of the fiscal authorities, at a million and a half?

A. I do not remember.

x-Q. 543. You do not remember that you had a discussion with the fiscal authorities on the subject of the 995
amount of the tax?

A. Yes, Sir, but it was not with me that the discussion took place.

x-Q. 544. With whom?

A. With him who paid.

x-Q. 545. You did not follow that, you did not have any knowledge of that?

A. Yes, indeed, I had knowledge of the discussion, but I did not follow it.

x-Q. 546. But perhaps you remember the com- 996
promise which was made?

A. No, Sir.

x-Q. 547. Who would have knowledge of that?

A. I do not know, Sir. It was Father Rey.

x-Q. 548. Father Grézier received a sum of four millions for the sale of the factory, of the fittings, to Father Rey?

A. Yes.

x-Q. 549. He died soon after?

A. Oh, no, he died several years after.

997

x-Q. 550. A long time?

A. I do not know exactly, but certainly he died several years after; I do not know how many years.

x-Q. 551. He died without leaving any fortune?

A. Yes, Sir.

x-Q. 552. By an act made before a notary, for the transfer of the business to Mr. Rey, at the same time were transferred the trade-marks, were they not?

A. Undoubtedly, but I do not remember these de-
998 tails, I assure you.

x-Q. 553. At least it was in conformity with this act that Mr. Rey successively made the transfer of his trade marks in England, in Germany and elsewhere?

A. Yes, Sir, undoubtedly.

x-Q. 554. Did Father Rey ever re-assign the mark to you?

A. I do not understand.

x-Q. 555. Was the trade mark, as well as the business, transferred to Father Rey by a notarial act made
999 before Mr. Sourd?

A. Yes.

x-Q. 556. Did he ever re-assign these marks to you?

A. He was dispossessed by the Tribunal of Grenoble, he had therefore nothing to re-assign.

x-Q. 557. You consider the Tribunal of Grenoble as constituting a retrocession?

A. We think that this judgment put us back in the way of the truth, by declaring that we were the true proprietors.

1000 x-Q. 558. This judgment was rendered against your most energetic protests, was it not?

A. Perhaps.

x-Q. 559. You know it very well?

A. Yes.

x-Q. 560. Had you not already transferred the same business, or rather had you not already made a contract with the Union Agricola for the working of the secret? you, the Superior Father?

A. Yes, Sir.

1001

x-Q. 561. And absolutely irreconcilable with the right of Father Rey?

A. Father Rey had no rights; he had no right before us.

x-Q. 562. That is to say you proceeded?

A. Yes.

x-Q. 563. Father Rey was the owner by title, in spite of that you made a contract with the Union Agricola as if Father Rey was not.

A. What the judgment of the Tribunal of Grenoble 1002
would be was foreseen; that was seen by the turn that events took.

x-Q. 564. Do you know that at the present time Mr. Rey presents himself as the owner of the mark in Germany, in England and in the Argentine Republic?

A. Sir, I assure you I now no longer know what is taking place on this subject. Since a year I no longer attend to it.

By Mr. Kelly: That is all. 1003

Session of Monday, February 26th, 1906.

(The session opened at 2.30 P. M., the Vice-Consul of the United States of America again acting as Commissioner).

The Revd. Father Baglin, witness, and Mr. P. Bonnet, the stenographer, are duly sworn.

1004

By Mr. Bonnet: I wish to remark, at the beginning of the sitting that not having been able to see the stenographic notes of the two last examinations: that of Mr. Kelly and my own, I have been obliged to rely, for the quotations concerning the examination, on the notes taken by Mr. Bachrich, our stenographer. It goes without saying that the quotations which I will make are made under all reserve of an ulterior comparison.

1005

RE-DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiff:

Re-d. Q. 1. Who signed the petition which you addressed to the Court of New York in the matter of Cusenier & Company?

A. It is Mr. Henri Batjer.

Re-d. Q. 2. Who is Mr. Batjer?

1006 A. He is our business agent in the United States.

Re-d. Q. 3. Why did you not sign the petition yourself?

A. I did not sign it because our Counsellors telegraphed, at my order, to bring the action in the United States, seeing that the liqueur of the Carthusians began to take there.

Re-d. Q. 4. Does the petition contain any gross inaccuracy?

A. Gross, no.

1007 Re-d. Q. 5. Does it contain any minor inaccuracies?

A. Minor, yes.

Re-d. Q. 6. What are they?

A. For instance when the petition qualifies me as Procureur of the Carthusians, that is an inaccuracy. I have never been Procureur of the Carthusians. When the petition states that the liqueur has been sold under the marks of the Carthusians for three hundred years, that is again a gross inaccuracy.

Re-d. Q. 7. To what do you attribute these inaccu-

1008 racies?

A. On account of the orders being given by telegraph, because it was urgent.

BY MR. BONNET: Mr. Commissioner, could you give me the bottles that I handed to you the day before yesterday?—the two bottles.

(The bottles and labels placed on the table are handed to Mr. Bonnet, who shows them to the witness).

1009

Re-d. Q. 8. These labels, this bottle, are really those which you have filed, or rather Father Grézier filed in the United States?

A. Yes, Sir.

Re-d. Q. 9. They are really those of which you make use in your business?

A. Yes.

Re-d. Q. 10. Does Cusenier use in the United States the same bottle and the same label?

A. Yes. 1010

Re-d. Q. 11. Is there no difference between the two labels?

A. No.

Re-d. Q. 12. Who printed your label?

A. It is Mr. Allier, of Grenoble.

Re-d. Q. 13. Does your label bear any mention of that?

A. Yes.

Re-d. Q. 14. What mention does this label bear?

A. "Lith. Allier, Grenoble." 1011

Re-d. Q. 15. Does the label of Mr. Cusenier bear the same mention?

A. No.

Re-d. Q. 16. What mention does it bear?

A. It bears the mention "Imp. Lith. Grenoble."

Re-d. Q. 17. The characters used to reproduce the words "Imp. Lith. Grenoble" on the label of Cusenier, are they fine characters or medium characters?

A. They are very fine characters.

Re-d. Q. 18. The characters adapted by Cusenier, 1012 and their disposition, are they the same as on your label?

A. Yes.

By Mr. Kelly: Objection, as not being proper re-direct examination.

Re-d. Q. 19. In your opinion, why has Cusenier used the three words "Imp. Lith. Grenoble" instead and

1013 in place of the three words "Lith. Allier, Grenoble," and with the same type?

By Mr. Kelly: Same objection.

A. It is solely to create a confusion and to cause the purchaser and consumer to believe that it was formerly the same liqueur which was manufactured and sold by the Carthusians under the same label.

1014 Re-d. Q. 20. To your knowledge, does Cusenier put a label on the bottle to indicate to the consumer that it is he who manufactures?

By Mr. Kelly: Same objection.

Re-d. Q. 21. In your petition to the Court of New York, in the Cusenier affair, you thus express yourself:

1015 "This imitation has been described under "the name of Chartreuse, falsely showing that "it is made according to the famous recepe "long possessed and still exclusively possessed "by your petitioner"—

By Mr. Kelly: Excuse me, I do not think that is a correct translation of the Petition.

By Mr. Bonnet: Will you allow me to read, Mr. Kelly. You will make all the objections you want afterwards.

By Mr. Kelly: I must do so at once.

1016 Mr. Bonnet (continuing):

"— and with a view to causing injury to your "Petitioner and to his Association, and to "deceive the public, these persons have offered "to the public the said (liqueur) imitation, in "bottles and cases similar in appearance to "those used for a long time by your petitioner "and his associates, and bearing labels similar "to those used by your petitioner and his asso-"ciates, and comprising the business mark of "the Chartreuse."

1017

To what manoeuvres do you make allusion in the passage that I have just read?

A. I have told you, two principal manoeuvres: in the first place the words "Imp. Lith. Grenoble," which resemble the words "Lith. Allier, Grenoble" and the absence of any counter-label.

Re-d. Q. 22. Here is a letter addressed by Mr. Jules C. Koenig to Messrs. Batjer & Cie.

1018

By Mr. Kelly: Objection. Same objection.

By Mr. Bonnet: I give the translation of this letter:

"Gentlemen. On the 14th inst. I gave your "representative an order for 25 cases assorted "Chartreuse, and I have since received a cir- "cular from the Cusenier Company, informing "me that they are the supply agents of the "Grande Chartreuse liqueur, and that nothing "has been changed in the business of the pro- "ducts of the Grande Chartreuse, which bear 1019 "the same labels as formerly. Under these "conditions I cannot attend to your Char- "treuse and I beg you to cancel my order for "the 25 cases."

(Signed:) "Jules C. Koenig.
p. H."

Do you know of this letter?

A. Yes. 1020

By Mr. Kelly: Objection, the letter not having been produced.

By Mr. Bonnet: It has been produced before the Court.

By Mr. Kelly: I do not know it.

By Mr. Bonnet: The Circuit Appeal Court of the United States (Second Circuit) in its decision, in your case, thus expressed itself:

"It would seem that pending final hearing

1021

" all confusion might be avoided if the Defend-
" ant should attach to its bottles labels similar
" to those adopted by the complainant, stating
" that this liqueur is made at the Grande Char-
" treuse, in France, under the direction of
" Lecouturier, appointed Liquidator of the
" property of the Congregation of Carthusian
" Monks after its dissolution and expulsion from
" France."

1022

Re-d. Q. 23. Do you know the passage of this decision?

A. Yes.

Re-d. Q. 24. Could you tell me who is Father Schmid?

A. Father Schmid is the Prior of the Chartreuse of Hain, in Germany.

Re-d. Q. 25. Has he filed in Germany marks identical to those which you have filed in the United
1023 States?

A. Yes.

Re-d. Q. 26. Does he make use of same?

A. Yes.

Re-d. Q. 27. Does Father Schmid allow his customers to believe that the liqueur is still manufactured at the Grande Chartreuse?

A. No.

Re-d. Q. 28. By what means does he prevent the public being deceived?

1024 A. By a counter-label.

Re-d. Q. 29. How is this counter-label worded?

A. "At present manufactured at Tarragona by the Carthusian Fathers."

Re-d. Q. 30. Abroad, in a general way, when you deliver Chartreuse with the old label, do you use the counter-label?

A. Always.

Re-d. Q. 31. On the subject of the origin of the name of the Carthusians, there was quoted on Saturday the book of a Carthusian Father: "La Grande

1025

Chartreuse par un Chartreux." Mr. Kelly indicated, with regard to this book, that the author declared that the Carthusians got their name from the village of Saint Pierre de Chartreuse. What is the name of the Carthusian, the author of this book?

A. This Carthusian is called Dom Cyprien Coutré.

Re-d. Q. 32. Do you know this Carthusian?

A. I knew him, yes.

1026

By Mr. Kelly: I make an objection to the citation of my words which I do not believe to be exact.

By Mr. Bonnet: The stenographer will show us that.

Re-d. Q. 33. Was this Carthusian qualified to put forth an opinion of this kind?

A. Oh, not at all. He was a literary man, an orator.

Re-d. Q. 34. Was he a specialist of epigraphy?

A. In no way.

1027

Re-d. Q. 35. Have not other opinions been put forth on the origin of the word Chartreuse?

A. Yes, several other opinions. For instance there are some who pretend that this word comes from "Cartosa," which signified the cell of the Carthusian formerly; others that it came from the old French "Carthouse." But all these definitions are worth one as much as the other, that is to say that they are not worth much.

1028

Re-d. Q. 36. Do you know of any authors who have put forth opinions on this subject?

A. Yes: Gustave Vallée, author of the "Sigillographie de l'Ordre des Chartreux."

By Mr. Kelly: Objection, unless the book be produced.

By Mr. Bonnet: It will be produced.

Re-d. Q. 37. Were there any other Convents inhabited by Carthusians which were called Chartreuses?

1029

A. Yes, Sir, many in France and abroad.

Re-d. Q. 38. Then from whence does the name of "Chartreuses" given to these convents come?

A. It comes from the inhabitants of the Convents, from the monks who inhabited the Chartreuses.

BY MR. BONNET: I am going to read you some passages from the examinations under which you went at the last two sittings. In one of

1030 these passages this is what you said:

"Q. When you requested the authorization for the Congregation of the Carthusian Fathers, did you include the other Convents, or was not your request simply made for the Convent of the Grande Chartreuse?

A. Solely for the Grande Chartreuse.

Q. Had you not also requested the authorization for the other Convents?

A. No, they were gone. All our French homes

1031 were evacuated.

Q. There remained therefore Fathers and Brothers only at the Grande Chartreuse?

A. Yes, Sir.

Q. And that is the reason why you did not ask for the authorization but for the Grande Chartreuse?

A. Yes."

Such is the reason which you gave to explain under

1032 what conditions you were led to solicit the authorization for the Convent of the Grande Chartreuse. Well, in your memorial in reply to the statement showing cause, on the project of the Law relative to the request for authorization, I read the following passage:

"The Carthusians have requested authorization having respect for the law of the 1st July, 1901, and they are reproached with only having solicited this authorization for the Mother-House and not for the other establishments existing in France. They thought they were con-

1033

forming more to the letter related above by limiting their request to the Establishment authorized in 1816 and in 1857. They wished, above all, to retain the Establishment which had been the cradle of the Order of the Carthusians, which is the residence of the Superior General and to which so many souvenirs attach them. But they will be happy to recall the monks who have left the Establishments they held in France and gone away but with regret, and if the 1034
Government regrets this departure the authorization given to the Grande Chartreuse will permit the legal reorganization of each establishment so much the more easily, in proportion to the needs of the moment, that the authorization will not necessitate a law but a decree given by the State Council. The Government will then have all powers to grant or refuse the authorization to the old establishments that the Mother-House might reconstitute. 1035
We could not understand that we could be reproached with a resolution that the circumstances explain and that other congregations have even followed without any remarks being made to them " (page 8 of the memorial.)

The motives which decided you to limit the demand for the authorization of the Convent of the Grande Chartreuse are they those which you made known at the late examination or are they those which you have 1036
developed in the passage of the memorial that I have just read?

A. There are these two kinds of motives.

By Mr. Kelly: Objection. Cross-examining his own witness.

By Mr. Bonnet: I read in the last examination of Mr. Kelly, on the subject of the case brought against Mr. Cusenier in the United States, in January, 1905, the following passage:

1037

"Q. How is it that in the Petition which gave rise to this case you are described as "Procureur" of the Order of the Carthusians?

A. It is a mistake.

Q. It is a mistake? Who was at that time "Procureur" of the Order of the Carthusians?

A. It was Father Rey."

Re-d. Q. 39. Was it Father Rey who was the "Pro-
1038 cureur" of the Order in the month of January, 1905?

A. Why, no, Sir, it is a mistake. I was so fatigued the other day that I made that mistake.

Re-d. Q. 40. Who was "Procureur" of the Order at that time?

A. It was Father Dom Roch Mallet, who has been Procureur since the month of August, 1903.

Re-d. Q. 41. You however stated to Mr. Kelly that Father Dom Roch Mallet had only been Procureur for the last year.

1039 A. Well, yes, that is a mistake. But I also attribute that error to the state of fatigue in which I was not only on Saturday but for some time previously.

By Mr. Bonnet: I also read in the examination you underwent from Mr. Kelly the following passage:

"Q. Do you remember the date at which Father Grézier was "Procureur" of the Order?

A. It was the last year of last century, or the
1040 beginning of this century, that he ended. He had been Procureur during thirty years."

Re-d. Q. 42. It results from your declaration that Father Grézier had been Procureur or still might be Procureur in 1900.

A. That is again a mistake. Father Grézier ceased to be Procureur in 1897, in the month of November. Yes, in the month of November.

Re-d. Q. 43. In the examination that I made you undergo I put to you the following question (27):

1041

Have you or have you not been "expelled *manu militari*"?

You replied: "We were expelled *manu militari* April 29, 1903." Then in the examination you underwent from Mr. Kelly you made the following declarations:

"Q. 8. Are you expelled, or simply unauthorized?

A. We are unauthorized, and by that itself 1042
we are obliged to leave, because our duty is to live according to our rule, under our rule, and as the French law does not allow us to live according to our rule we are obliged to leave. That is equivalent to expulsion."

There is in these two replies a contradiction. I should like to know if your expulsion was accompanied by violence, by blows—

A. Yes. 1043

Re-d. Q. 44. —whether you were not obliged to submit only to force, or if on the contrary you simply bowed before the law?

A. Sir, we submitted to force. We were expelled the 29th April, 1903, when they broke open the doors of our residence; the *gendarmes* expelled us by violence, not only myself but all the monks who were in the Convent of the Grande Chartreuse.

Re-d. Q. 45. In the last examination I made you undergo I read the following passage: (direct questions 1044
91 to 100, inclusive).

In the cross-examination that you underwent from Mr. Kelly I read as follows (cross-questions 331 to 352, inc.; 365 to 375, inc.).

Re-d. Q. 46. There are in these two testimonies that I have just read, statements which at certain moments may appear irreconcilable and at least obscure. It is your duty to tell the truth, the whole truth, and to tell us the same with perfect preciseness. By whom

1045 did you procure the wild plants and the cultivated plants?

A. By ourselves, through voluntary dealers and, when we were short, through Mr. Villard.

Re-d. Q. 47. Did Mr. Villard supply you with all the the species of wild and cultivated plants?

A. Yes, all.

Re-d. Q. 48. Did you keep check of the origin of these plants?

1046 A. How could you do that? how would you do that? impossible.

Re-d. 49. Are there any kinds of wild plants which it was necessary to gather in the group of the Grande Chartreuse?

A. No.

Re-d. 50. Did you go to the trouble to find out where the plants which were brought to you came from?

A. No.

1047 Re-d. Q. 51. Did you have the pretention of keeping a check as from whence these plants came? did you have any possibility of doing that?

A. It was impossible.

Re-d. Q. 52. How long ago did you buy the domain of Chougnes?

A. From 25 to 30 years.

Re-d. Q. 53. Of what did the domain of Chougnes comprise?

A. It consisted of vines, kitchen gardens, woods,
1048 fields and pasture land.

Re-d. Q. 54. Did you gather at Chougnes all the kinds of plants which you cultivated at the Grande Chartreuse?

A. Yes, Sir, all.

Re-d. Q. 55. Did you gather at Chougnes all the kinds of plants which you gathered in the group of the Grande Chartreuse?

A. Yes, Sir.

Re-d. Q. 56. Who gathered the wild plants at Chougnes?

1049

A. It was the brothers.

Re-d. Q. 57. Since what period did you notice that the plants of the group of the Grande Chartreuse were not necessary?

A. Little by little, after we bought Chougnes and we made use of the plants of Chougnes.

By Mr. Bonnet: Thank you.

Re-cross Interrogatories by Mr. Ed. Kelly, repre- 1050
senting the Defendants:

Re-x-Q. 1. When did you buy Chougnes?

A. Twenty-five to thirty years ago.

Re-x-Q. 2. 25 to 30 years?

A. I believe so, I was not there.

Re-x-Q. 3. You were not there?

A. I was not there.

Re-x-Q. 4. And you cultivated at Chougnes?

A. Yes. 1051

Re-x-Q. 5. Did you harvest wild plants at Chougnes?

A. Yes, also.

Re-x-Q. 6. Also? And you are sure that there were not any plants of which you made use for the manufacture of the Grande Chartreuse, any wild plants that you did not harvest at Chougnes?

A. Sir, all those which were harvested in the group of the Grande Chartreuse, were harvested at Chougnes.

Re-x-Q. 7. Therefore you did not harvest wild 1052
plants at all in the group of the Grande Chartreuse?

A. Yes, Sir, but the same could be harvested elsewhere.

Re-x-Q. 8. You have said in the first place that you harvested all your wild plants at Chougnes?

A. When did I say that.

By Mr. Kelly: A minute ago.

By Mr. Bonnet: Can I make an objection, without interrupting you?

1053

By Mr. Kelly: I cannot prevent you, Mr. Bonnet.

By Mr. Bonnet: We must, one as much as the other, seek for the truth. Will you allow me to tell you the question as you put it: "All the plants * * *" does that mean every kind of plant, or, of each kind, the whole quantity of plants necessary. I request, according to what you want to know from the witness, that
1054 the question be put in one way or the other.

Mr. Kelly asks the stenographer to repeat the preceding questions.

By Mr. Bonnet: Will you ask your stenographer to read what you said. Believe me, it is not a quarrel which I am trying to make.

(The Stenographers-Secretaries of Mr. Bonnet and Mr. Kelly read the following passages in question):—

"Q. And are you sure that there were not any
1055 plants of which you made use for the manufacture of the Grande Chartreuse, any wild plants that you did not harvest at Chougnes?

A. Sir, all were harvested; those which were harvested in the group of the Grande Chartreuse, they were harvested at Chougnes.

Q. Therefore you did not harvest wild plants at all in the group of the Grande Chartreuse?

A. Yes, Sir, but the same could be harvested elsewhere."

1056 By Mr. Kelly: I beg that you will reconcile these two answers which have just been read to you.

A. I have told you, what I repeat to you, that one could harvest just as well at Chougnes as in the group of the Grande Chartreuse.

Re-x-Q. 9. I now repeat to you: Were there not wild plants, of which you made use for the manufacture of the Grande Chartreuse which you harvested elsewhere than at Chougnes?

1057

A. Perhaps, Sir, I do not know where they came from.

Re-x-Q. 10. You were very affirmative on this question at the last sitting?

A. Sir, please take into account the tired condition in which I was. The examination was very long.

Re-x-Q. 11. Very Reverend Father, I hope that when I am your age I shall be as vigorous as you are. I think you are even more vigorous to-day than I am. You answered me very affirmatively, and I ask you 1058 either to reconcile your testimony of the last session with your testimony to-day, or to tell me which of these testimonies you hold to.

A. I told you very affirmatively, I repeat it once again, that the plants which were gathered in the group of the Grande Chartreuse could just as well be gathered elsewhere.

Re-x-Q. 12. You said at the last session that there was a time when you imagined, or the Carthusians imagined that the plants of the Grande Chartreuse had 1059 a special value and were even necessary for the manufacture of the Grande Chartreuse. You were not able, at the last sitting, to state precisely the date when you changed this idea. But as it has been possible for you since the last sitting to be more precise on many other points, I ask whether to-day your memory will not permit you to tell me as to about when this discovery was made?

A. Sir, at the beginning we manufactured very little liqueur. There was no need of going to look far for 1060 the plants, they were to be found around us. Little by little the production having increased, and having purchased Chougnes in the interval, we perceived little by little that the plants of the mountain group of the Grande Chartreuse were not at all necessary, not at all indispensable.

Re-x-Q. 13. That may be true as to many plants and not be true as to all the plants, either all the plants of the same kind or all the plants which enter into your manufacture?

1061

A. What I have told you is the general truth.

Re-x-Q. 14. The general truth? but do not plants exist to-day, growing at the Grande Chartreuse, which seem to you useful and even necessary?

A. Sir, those which grow at the Grande Chartreuse and which are useful to us, and even necessary, grow elsewhere.

Re-x-Q. 15. And it is dating from the day you purchased Chougnes that you discovered that you could
1062 go elsewhere for the plants?

A. From that time, little by little.

Re-x-Q. 16. From that time, little by little. When you said you were expelled *manu militari*, you mean to say expelled from your home, but not expelled from France?

A. Yes, indeed, we were expelled from both, from our home and from France.

Re-x-Q. 17. *Manu militari*, from France?

A. The *gendarmes* did not pursue us up to the
1063 frontier but they had us pursued up to the frontier by agents of the Government.

Re-x-Q. 18. Do you actually make use to-day of the label which you have produced in evidence, here, in the United State?

A. (Showing the labels): These?

By Mr. Kelly: Yes.

A. Yes, Sir.

1064 Re-x-Q. 19. At the present time in the United States?

A. Sir, I do not know what is going on at the present time, I assure you. I am no longer at all at the Grande Chartreuse.

Re-x-Q. 20. You have affirmed that you make use of these marks to-day.

A. I mean by that when I was still in power, when I was still Superior General.

Re-x-Q. 21. Who in the Order would be able to testify on this question?

1065

A. I know nothing more about it, nothing more now; I no longer attend to all these questions, since more than a year.

Re-x-Q. 22. But I ask you who, according to your rules, attends to these questions?

A. I no longer attend to these questions and no longer wish to attend to them hereafter.

Re-x-Q. 23. But that does not prevent me from having the right of asking you who is the person in your Order who would have knowledge of the question 1066
as to whether, yes or no, you make use of the label in question in the United States?

A. I know nothing about it.

Re-x-Q. 24. Would the Procureur know it?

A. I do not know.

Re-x-Q. 25. Is it not rather Mr. Batjer who would know it?

A. Who?

Re-x-Q. 26. Mr. Batjer, your agent in the United States? 1067

A. Perhaps, yes, Sir.

By Mr. Kelly: That is all.

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American Consulate-General
City of Paris
Republic of France

Pères Chartreux
versus
Cusenier Co.

COMPLAINANTS' REBUTTAL PROOFS.

1070

SESSION OF Monday, May 28th, 1906, at 2 P. M.

Present :

MR. AUGUSTUS E. INGRAM, Vice-Consul-General of the United States of America, at Paris, France, Commissioner.

MR. J. BONNET, Counsel for the Plaintiff, assisted by MR. BARBANCEY, Secretary and
1071 MR. BACHRICH, private stenographer.

MR. EDMOND KELLY, Counsel for the Defendant, assisted by MR. ROCQUES, chemist, and MISS GILLET, private stenographer.

G. DUCLOS, official sworn French stenographer.

LOUIS PILLET, No. 4 Boulevard St. Michel, Paris, France, aged thirty-eight years, chemist, having been produced, sworn and examined on the part of the
1072 Plaintiffs, doth depose and say as follows :

DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiffs :

Q. 1. What is you name ?
A. Pillet.
Q. 2. What are your christian names ?
A. Louis.
Q. 3. What is your age ?
A. 38 years.
Q. 4. What is your residence ?

1073

A. My business address is No. 18, Rue Saint Herri, and my private residence is No. 4, Boulevard Saint Michel, Paris.

Q. 5. Your profession?

A. Engineer chemist, distiller of essential oils.

Q. 6. Have you no particular titles?

A. I am the President of the syndicate of my industry. Moreover I have had certain official functions, and particularly I was appointed by decree Member of the Extra-Parliamentary Committee of Alcohols, Wines 1074
and Spirits at the Ministry of Finance. In that Committee I formed part of the third Sub-Committee, entrusted with the Study of the Hygienic Regulation of Alcohols and Spirits, and the remedies against alcoholism; I was appointed "Rapporteur" of that Sub-Committee. In another branch I am laureate of the "Société d'Encouragement pour l'Industrie Nationale", for a work I wrote upon the essential oils, and which in June, 1900, obtained from that Society a prize of 2,000 francs. 1075

Q. 7. In the actual condition of science is it possible to make the analysis of Chartreuse qualitatively and quantitatively with a view to reconstituting that liqueur synthetically?

A. It is impossible.

Q. 8. Would you oblige me with some reasons for the opinion you have given?

A. A liqueur, whether it be Chartreuse or any other liqueur, such as Benedictine, Anisette, Curaçao, etc., is composed of different factors which I will divide into 1076
three categories: the alcohol, the sugar and aromas. For the alcohol an exact proportion can be made from the point of view of the alcoholic degree, that is to say that it can be stated with exactitude: this liqueur has a standard of 40, 45, 50, 52 alcoholic degrees. It is impossible, on the contrary, to state whether the alcohol entering into the composition of that liqueur is a commercial alcohol extracted from beets—which is generally the case—or from rice or from a very well rectified wine alcohol. If the wine alcohol is not very

1077 well rectified it could be said that it is wine alcohol. I mean by very well rectified, from the chemical point of view, and the chemical analysis, if it contains for instance a proportion of what is called non-alcohol superior to 300 milligrammes per litre at 100 degrees, for us, chemists, when an alcohol contains in non-alcohol a proportion higher than this figure it is a wine alcohol, but if it contains for instance 50 milligrammes of non-alcohol per litre of 100 degrees, it is
1078 impossible to say whether it is a commercial alcohol or a wine alcohol. When a wine alcohol gets to a certain degree of rectification we assimilate it, from the chemical point of view, to a commercial alcohol. Therefore, from the point of view of the analysis properly so called of a liqueur, when an alcohol does not contain a proportion of impurities higher than this figure, which at present is taken at 300 milligrammes, we put it down under the heading of commercial alcohol. As to the sugar which enters into
1079 the composition of the liqueur, we can say whether it is saccharose or glucose or maltose or lactose, in fact all the different chemical sorts of sugar. When it is saccharose we cannot say whether it is cane sugar or beet sugar. As to the question of aromas and essences, it comes to this : all the liqueurs contain a number, more or less high, of aromatic principles. Certain liqueurs, like mint liqueurs, contain only one essence, the essence of mint for the liqueur in question ; others, on the contrary, like Chartreuse, Benedictine, etc.,
1080 contain 12, 15, sometimes 20 different aromatic principles. In that case the present scientific knowledge permits us solely to state in a litre of that liqueur there are on the whole so many grammes of aromas, for instance, 2, 2.5, 2.8, 1.5 of aromas in the lump, but these 2 grammes or these 2.5 grammes, what they include, whether it is 0.5 of essence of absinthe, 0.3 of essence of anise, 1.2 of essence of badiane, that is what it is materially impossible in the present state of science to determine. That is what I mean when I say that by chemical analysis it is impossible to de-

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termine the exact constitution of a liqueur with a view to a future reconstitution.

Q. 8. Can this result be obtained, that is to say the analysis with a view to the synthetic reconstitution of a liqueur—can this result be obtained by tasting?

A. Oh, that is absolutely impossible. Tasting is a thing which is totally devoid of precision. Tasting is based upon the physical capacity, in some degree, of an individual. There are individuals who are predisposed as tasters, like others who are predisposed 1082
for manual skill like good surgeons, like professional ability, but it is a thing, tasting, which does not exist from the mathematical point of view. An individual, even very expert, according as he is more or less well disposed, whether he have a cold in the head, or be in a different physiological condition, will give different opinions on different days. Therefore from the point of view of analysis, that is to say a thing which is serious, scientific, mathematic, tasting gives no kind of guarantee. 1083

Q. 9. In your opinion does the manufacture of Chartreuse include a secret?

A. Like all manufactures of liqueurs, all liqueurs and especially the liqueurs of mark, are based upon secrets of manufacture, exactly as in other branches of my industry, perfumery, the special perfume of each firm is based upon a secret of manufacture.

Q. 10. On what do you rely to affirm that certain products of mark, liqueurs, perfumery, are always based on a secret of manufacture? 1084

A. Upon what do I base that? I reason as follows: If there was not a secret of manufacture for each of those products, for all the products considered as superior to others, every firm would make a similar product. I take examples in the distilling industry. It is considered that of its own kind, Chartreuse—of its own kind—is superior to any other. Benedictine, Marie Brisard Anisette, Bols Curaçao, those are called liqueurs of mark, considered by connoisseurs as superior to other similar liqueurs. If it were not materi-

1085 ally impossible to give an exact account of what there is in these products, to analyze them, as you say, to reconstitute them, every firm would make a curaçao, an anisette, a benedictine, a chartreuse, exactly similar to the standard liqueur considered as the best, as the liqueur of mark.

Q. 11. In one of the last examinations I put to Mr. Rocques, the chemist, a question touching the secret of manufacture. I asked him whether, in his opinion,
1086 he thought there was a secret of manufacture in Chartreuse, if Chartreuse was manufactured by a secret process, impossible up to the present time, to reconstitute. I will not read you the whole of the testimony of Mr. Rocques unless Mr. Kelly desires it—

By Mr. Kelly : Not at all.

By Mr. Bonnet : —but I am going to try to analyze it as faithfully as possible. Mr. Rocques said : "In
1087 the manufacture of Chartreuse there is no secret, there is at most but a culinary recipe. I insisted, in order to get a clear and precise definition of what is a secret, and I must state to my great regret that I could not obtain from Mr. Rocques a very satisfactory reply. But still, I get this : For Mr. Rocques the manufacture of the Chartreuse liqueur does not contain a secret. What do you think of the opinion of Mr. Rocques ?

A. Well, my idea of the opinion of Mr. Rocques is that in the first place, in speaking of the secret of
1088 manufacture, of culinary recipe, etc., he was playing on words, as it is popularly said. Whether there is a culinary recipe belonging to a certain house or a secret of manufacture, I consider it is exactly the same thing. On the other hand it results from what I have read in Mr. Rocques' work on Spirits and Liqueurs, that in that work Mr. Rocques in giving, as it happens, some formulas of liqueurs, says : "I do not pretend to give the exact formula of the best liqueurs seeing that in every firm there are secrets of manufacture." Mr.

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Rocques says it himself in his book, he admits that phrase : Secret of manufacture.

Q. 12. Here is the work of Mr. Rocques, will you read me the passage in question, to which you allude ?

A. In the chapter on liqueurs —

Q. 13. What is the title ?

A. The work is : " Les eaux de vie et liqueurs," par Rocques, 1898. Chapter VIII, Liqueurs. On page 130, opposite page 131, where there is " Imitation of the liqueurs called of the Grande Chartreuse," 1090
well on page 130, in the middle, there is this phrase :—

" We do not pretend to give here the recipes of the " best of the most celebrated liqueurs, seeing that " those recipes are the secrets of the firms that " work them. There are manuals for that purpose."

Well, Mr. Rocques admits—and it is the truth, admitted by everybody, that these very formulae, extremely complex, since there enters into them ten, twelve, fifteen, eighteen, twenty different products, 1091
constitute what we usually call the secrets of our firms. The formulary, in a distillery, as in a perfumery, the collection of these formulæ, which sell for 200,000 and 300,000 francs, in the good-will of an important business, what makes the basis of the good-will is the formula, that is what we call the secret of our firms. Not only does the formula constitute the secret, but here are plants—the manner of treating these plants to make alcoholates, the time of the infusion, the temperature at which the 1092
infusion is made ; the manner in which this is done are all knacks which on the whole constitute a real secret, which makes the fortune of a firm in certain cases. Thus, for example I cited the Marie Brisard Anisette. It has a basis of anise, it contains a little coriander, a little badiane. In what proportions ? These proportions constitute precisely the secret of the firm, and it is so much a secret that if there were no secret all houses would make a liqueur absolutely

1093 identical with that which is considered as superior to the others.

Q. 14. Mr. Lecouturier, in his testimony (for defendant), questioned by me in order to know whether he could clearly give me a definition of the secret, since he declared that the Carthusians had no secret, made the following statement to me, which I am going to read to you :

In the first place I asked him [on cross-examina-
1094 tion] :

" As you oppose the Process to the Secret of manufacture, what difference do you make between the secret and the process. Can you tell me what difference you make ?

A. That is to say that the secret of manufacture would be a fixed recipe, such a formula that if it were not possessed it would be absolutely impossible to make the liqueur, whilst the
1095 process of manufacture is a way of being able to make the liqueur more or less good according to the skill of the producer or his knack.

Q. 5. Then according to you, that is the only difference which exists between the secret and the process of manufacture ?

A. I may tell you it is not at all my business, you know.

Q. 6. You have just made a declaration and concerning that declaration I ask of you an ex-
1096 planation. You oppose the secret to the process ; I ask you to define the secret in opposition to the process, and I ask you if you really hold to the explanation which you have just given ?

A. Yes.

Q. 7. Then what characterises the secret is that it is immutable, and that which characterises the process is that it is not immutable, and that the process depends upon the skill of the professional ?

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A. No, I consider that if there were a secret of manufacture and that it were not known, it would be impossible to manufacture the liqueur in question.

Q. 8. Is not the secret of manufacture a process ?

A. I do not understand, if the secret is a process, you cannot ask me the difference between the secret and the process.

Q. 9. It is precisely because the definition 1098
that you give is so opposed to the definition that is usually given of the secret of manufacture that I try to get you to be precise. Will you, once more, tell me what is a secret of manufacture ?

A. I refer you to what I have said."

You have heard the reading of the testimony of Mr. Lecouturier who opposes the secret to the process of manufacture. Will you also give me your opinion on 1099
the Liquidator's views ?

A. In the first place, as Mr. Lecouturier says in his testimony, it is evident that, not being as is commonly said, in the trade, he cannot know exactly what happens in the distilling industry and he makes a confusion between the process and the secret. That is to say that in the secret, as I understand it, as we understand it, we business men, the process is included as one of the factors, as I explained to you just now. In
the manufacture of a liqueur there enters in the first 1100
place the formula. I cited you, for example, the formula as shown in the book by Mr. Rocques, giving 20 different primary ingredients in fixed proportions. That is the first part of what I call the secret : the formula, that is to say the list of primary ingredients, with the quantities of same which enter into the liqueur. Then, second part of the secret, the process, the way of treating those primary ingredients. If you put together the formula, that is to say the proportions of primary ingredients, and the process, that is to say

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the way of treating them, that is the whole which forms the secret of manufacture.

Q. 15. Do you know an operation sometimes used in the manufacture of liqueurs and which is called the "tranchage"?

A. Certainly.

Q. 16. Can you tell me of what the "tranchage" consists?

A. The "tranchage" consists when once an alco-
1102 holate, or a mixture of alcoholates has been made, in bringing this alcoholate or this mixture to a temperature of—say 40, 45, 50 degrees—that again depends on the product that is required to be made, and every firm has also a knack which it thinks to be the best, to obtain the liqueur that they wish to prepare. This operation, the elevation of temperature has the effect of well amalgamating all the elements, the primary ingredients which constitute the alcoholate, that is to say the alcohol on the one hand, the aromas on the
1103 other hand. It is in some respects an artificial aging that is produced.

Q. 17. Is it possible to say by chemical analysis or by tasting that in such a liqueur such or such an alcoholate composing the liqueur has undergone the operation of "tranchage"?

A. It is impossible.

Q. 18. I will let you know, Sir, the opinion of Mr. Rocques as concerns tasting. I am still referring to his testimony from the stenographic notes: Question
1104 68 of the cross-examination:

> "Q. 68. After that, if you like, we will continue our examination. I revert then to your reply where you say that the Sanglé-Ferrière method may be useful, but you add: 'I think it is still 'by the help of tasting, assisted if need be by 'this index of iodine, that the most exact result 'can be arrived at.' Mr. Tièche, manager of Mr. Cusenier's liqueur factory, has declared to us that he had recourse to nothing but tasting

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in order to discover how Chartreuse was constituted. Here is the passage from his testimony: I read the passage of the testimony of Mr. Tièche: 'Question 66. And you arrive at this 'conclusion that the taste is the only means of 'analysis at your disposal?

'A. And others also, for liqueurs.

'Q. 67. Will you let me know the means at 'your disposal?

'A. There are not any existing to my knowl- 1106
'edge. You proportion your essence, you have 'the composed essences, you are not able to 'isolate them.

'Q. 68. You have just said that some means 'of analysing are at your disposal?

'A. I speak of the taste.' "

Such is the quotation that I made from the testimony of Mr. Tièche. I continue the question that I was addressing to Mr. Rocques: 1107

"I afterwards put to Mr. Tièche a question, "I asked him whether he knew the Sanglé-"Ferrière method, he replied to me that he was "ignorant of it. In your opinion do you con-"sider that in view of the declarations that Mr. "Tièche made to us, it would be possible for "him by tasting to get to know the composition "of a liqueur"?

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Mr. Rocques replied to me: "For my part I think "it is the best method of operating."

I should like to ask you your advice on the opinion expressed by Mr. Rocques?

A. Well, I can but repeat what I told you just now in regard to tasting, that is that tasting done by someone who is absolutely competent may give indications, an approximation, but as to saying that by tasting a liqueur can be analysed, that is to say to determine exactly its constituents and the proportions in which

1109 those constituents enter, with a view to a subsequent reconstitution, that is materially impossible. Moreover, I might refer back also, as to this question, as I did previously, regarding the secret of manufacture, to the works themselves of Mr. Rocques, to a lecture which he gave at the Pasteur Institute on spirits, and in which he made allusion to experiments made by tasting, and when he said categorically, if I have a good memory, that out of six or seven tasters called to
1110 examine a product there was a very great difference in their estimations. And that is due to the fact that I showed you just now, that tasting, based upon the physical capacity of an individual, is open to considerable risk, which does not absolutely allow that necessary exactitude to be attained when one speaks of analysis and the reconstitution of liqueurs.

Q. 19. I also put, Sir, to Mr. Rocques, various questions about the manufacture of alcoholates. I asked Mr. Rocques if it were possible to obtain every
1111 year, in a liqueur business, standard alcoholates, invariable alcoholates, alcoholates which should take into account this fact : that the plants contain variable quantities of essences each year, quantities of essences which depend upon the atmospheric conditions. Mr. Rocques replied to me that it was not possible, and that especially the method of the index of iodine did not permit it. He based his reply on this : that the method of the index of iodine applied to different essences of anise gave different results—
1112 speaking, of course, here of a single and same essence —and he concluded from that that the manufacture of a standard alcoholate was impossible.

He gave, moreover, another reason, drawn from this fact : that the essences themselves, which are the component bodies, which are bodies of a heterogeneous composition which contain many chemical principles, themselves vary in composition each year. I should like to have your way of looking at it, your appreciation as to the opinion given by Mr. Rocques?

A. This question of alcoholates has a very great

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importance, commercially speaking, it is particularly one of the important branches in the business of my firm. We principally make essential oils, but we also sell a good many alcoholates or spirits, what is called alcoholate or spirit, that is to say alcohol aromatized by means of an essence ; spirits of noyau, aromatized with the essence of bitter almonds, spirits of lemon, spirits of mint, spirits of curaçao, &c. Well, we claim, and our claim is justified by the satisfaction of our customers, to make alcoholates 1114
which are always identically the same, and the thing is easy, for this reason :

The question is, of course—I take the standard of the simple alcoholate, that is to say alcohol containing a single essence,—it is certain that according to the years the plants from the same soil give different quantities of essential oils. The mint plant, for instance, Japanese mint, or Mitcham mint, or the local mint, what we call the mint of the Alpes Maritimes, gives every year a different yield of essential oil, 1115
according to the climatic conditions, according as the year has been more or less dry or wet, according as the sun has shone more or less : the yield of the plant in essence is variable. But we distillers of essential oils, manufacturers of essences, are immediately able to discover, by distilling these plants by the means of steam, their yield although they give—a 100 kilogs. of mint, for example, give 300 grammes or 325 grammes, or 275 grammes of essence of mint according to the years. But, once this essence is 1116
obtained, when we wish to make our alcoholate we take two grammes of this essence, we put them into a litre of alcohol of a given degree, 70°, 75°, 80 degrees, and we obtain an alcoholate or spirit of mint having every year the same capacity in essence of mint. And we can verify this by the Sanglé-Ferrière and Cugniasse method called the index of iodine. This method may be more or less exact ; I will not enter on the question of the absolute exactitude of this method, but to make a standard alcoholate it

1117 is not necessary that it should be mathematically exact; it suffices that having determined the index of iodine of this mint, that having put in a litre of alcohol of a given degree a fixed quantity of essence, we should determine the capacity in essence of that alcoholate. I have put, for example, two grammes of essence of mint, the method shows me by analysis 1.9 or 2.1. Well, I have only to make every year an alcoholate giving me, by the application
1118 of the Sanglé-Ferrière and Cugniasse method, the figure of 1.9 or 2.1 that I obtained the first time, to be certain that my alcoholates will always contain the same quantity of essence. Thus I affirm that by this method one can always have an alcoholate identically of the same strength in essential oils.

Q. 20. Mr. Rocques, I told you, declared to us that the essences of the same plant had variable components every year in the component elements. According to your personal experience are these differences
1119 sufficiently great for you to say it is impossible to constitute a standard alcoholate the same every year in spite of these variations in the composition of essences?

A. When it is a question of essences of the same origin I consider that the variation of one year with another is of such a minute kind that it has no importance from the point of view of the composition of alcoholates:—when it is a question, of course, of essences of the same origin. I mean by that—I take the
1120 example of mint, that is the most common, and upon which we are best informed. If it concerned Japanese mint, Mitcham mints, American mints or mints from Provence, then the essences have very considerable variations one from another as to composition, but the essence of mint from one year to another, be it either Japanese mint or Montauroux mint, presents variations so exceedingly minute that they cannot have any influence on the methods of analysis, from one year to another.

Q. 21. Suppose, Sir, we have essences even of dif-

1121 ferent origins; take for example essences extracted from plants coming from Italy, coming from Spain, essences of plants coming from Switzerland, coming from France. Could it not—I do not say that that may be the process used by the Carthusian Fathers, I am ignorant of that—could it not be conceived possible to always have the same essence although one had plants of different origin?

A. Theoretically, the thing is possible, theoretically, and this is how I should take it—But I own at once 1122 that it is but of a theoretical process I am going to speak: You alluded just now to the fact that essences are complex bodies and that they are constituted by different chemical functions. An essence may contain, for instance, a cetone, an aldéhyde, an alcohol, a terpene, &c. I take a given essence, I analyse it, I am able to decompose it in all its constituents, I am able to determine for instance, that it contains 25% of citral, 15% of thymol, 7% of menthol, &c.—If I afterwards take these constituents chemically isolated in a pure 1123 state, and I add them one to another in the proportions indicated by the analysis, I should evidently get at, theoretically, a standard essence which would be always, and always and always the same. Therefore theoretically the thing is possible, but I ought to say that practically it is a thing which is not done.

Q. 22. Do you consider that it is possible that the Carthusians, for instance, employ this process?

A. Everything is possible in the matter of the secret of manufacture. It may be that a house bases the 1124 manufacture of a liqueur on the use of essences entirely constituted by the reunion of constituent elements. I do not know if that is done in practice, but theoretically it is absolutely possible, and there is one industry in which that is commonly done, that is the industry of perfumery. You may have noticed during the last few years there has been created a considerable range of perfumes, to which have been given most singular names, such as "Jardin de mon curé," "Kiss me quick," "My flirt," etc., correspond-

1125 ing to no product of nature. Well, these aromas created by these firms constitute their secret, and they are precisely obtained by dissolving in alcohol various component bodies, constituent bodies of chemically pure essences, and it is the union of these constituent bodies which constitutes the essence, the final bouquet which is designated by the perfumer by the more or less curious name he has chosen. Well, it would be possible, in the matter of liqueurs, for a liqueur to be
1126 entirely made solely based on the use of these constituent bodies of essences, and thus one would be certain of having always, always, always a product identically the same.

CROSS INTERROGATORIES BY MR. E. KELLY :

x-Q. 1. Is there a secret of manufacture for the manufacture of curaçao ?

A. I can but repeat what I have already told you
1127 just now ; that is, that in every firm there is a secret of manufacture for each product.

x-Q. 2. But, in general terms, is it not very generally known in the trade how curaçao is made ?

A. There are general bases evidently, but there are knacks and details which are special to each firm.

x-Q. 3. At least all distillers make curaçao ?

A. Curaçao liqueur, yes.

x-Q. 4. Therefore, it cannot be said that there is a secret of manufacture for curaçao ?

1128 A. That depends upon what you mean by secret of manufacture.

x-Q. 5. You spoke of Bols curaçao, acknowledging that he has a secret of manufacture ?

A. That he has a superiority due to a secret of manufacture.

x-Q. 6. But now for ordinary curaçao ; there is no secret for the manufacture of ordinary curaçao ?

A. It is necessary to agree as to what is ordinary curaçao. There are liqueurs—I will take rather the example of syrups. There are syrups called pharma-

ceutical, the composition of which is fixed by the pharmaceutical codex, the code; for example, all the syrups made according to the pharmaceutical codex must be identical, it is an unswerving mathematical formula which will always give the same result. But take a syrup of grenadine, which is not inserted in the pharmaceutical codex, there are not two syrups of grenadine alike in two distilling houses; each will have his secret, will change the proportions. 1129

And for curaçao the process is the same. It is known from the treatises on distilling by Duplais, by Mr. Rocques and by others that curaçao liqueur contains such and such products. If everybody, such as in the case of the pharmaceutical codex, said I am going to make my curaçao according to the formula of Duplais or Mr. Rocques, there would be no secret of manufacture. But as each person makes it according to his own idea, there are variations in curaçao. You will not find in the trade two curaçaos alike. 1130

x-Q. 7. But all distillers, all people in the trade, can make curaçao, can they not? 1131

A. Oh, evidently.

x-Q. 8. But Mr. Bols has a system of his own?

A. That is certain; Mr. Bols has evidently a source of primary ingredients and a way of treating those primary ingredients, that is to say that which constitutes a process of manufacture; he has, as I said just now, a formula and a process which taken together, constitute for his firm a secret which makes his product considered by some to be superior, by others as equal, by others as inferior to the Cusenier or Wynand Focking curaçaos. 1132

x-Q. 9. If I understand you aright there is a secret for the manufacture of Bols' curaçao and Wynand Focking curaçao, but for curaçao generally it cannot be said that there is a secret? But as everybody can make it?

A. Yes, everybody will make a liqueur which will have the taste of curaçao, but not two of these liqueurs will be alike.

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x-Q. 10. What is it that may vary?

A. The quantity of primary ingredients may be varied.

x-Q. 11. Is not that what Mr. Rocques meant to say when he spoke of culinary recipe—that the cook could put more or less pepper or salt in his hash?

A. I do not know what Mr. Rocques meant to say by that expression culinary recipe, he must have defined it.

1134 x-Q. 12. There is this difference between a chemical formula, is there not, and a culinary recipe, that the chemical formula cannot vary whilst the culinary recipe may vary according to the taste of him who makes it?

A. I think that if you told distillers they had culinary recipes they would find it difficult to admit that expression.

x-Q. 13. They would find the expression offensive, perhaps?

1135 A. Probably.

x-Q. 14. But since we are not here to make compliments, but to study the science of Chartreuse, is there not really this difference between a chemical formula and a culinary recipe that the chemical formula cannot vary whilst the culinary recipe may vary?

A. A chemical formula is evidently a thing that cannot vary an equation, I mean a chemical equation. You put two bodies together, there takes place a reaction

1136 which produces other bodies: that is a chemical formula, which is as immutable as a mathamatical formula. On the other hand to call that reaction that you form in an alembic a culinary recipe or recipe of distilling, or formula of distilling, is to play upon words, as I said just now.

x-Q. 15. Then if everybody can make curaçao, but if everybody cannot make Bols' curaçao, then it may be said, can it not, that there is no secret of manufacture of curaçao but that there is a secret in the manufacture of Bols' curaçao?

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A. Yes.

x-Q. 16. Then when it is a liqueur that everybody can manufacture, under those conditions it may be said that there is no secret of general manufacture of that liqueur?

A. When it is not a liqueur of mark, evidently.

x-Q. 17. If you were shown the proof that many persons can manufacture a liqueur which so much resembles the Chartreuse which the Carthusians formerly manufactured at the Grande Chartreuse that 1138
they cannot be distinguished, that even tasters cannot distinguish them, would you not say the same thing about Chartreuse as about curaçao?

A. That would depend upon what you mean by bringing proof. You might present to me 200 individuals for instance, unanimous in not distinguishing the products, that would have a certain value, but when it is a question of tasting, as it is to that you alluded just now, as there are constantly differences, I consider there is not absolute proof. 1139

x-Q. 18. No, not absolute proof, let us admit that. But we take as a judge the public at large, the individual who is not in the trade. If you can be shown proof that a man of the ordinary public cannot possibly distinguish between several liqueurs made by several persons all having the same taste as Chartreuse, would you not say the same thing about that Chartreuse as you have just said about curaçao?

A. If there were unanimity in the approbation of the public one would be obliged to take into consid- 1140
eration that there was an absolute similarity, but it appears from the information I have that for Chartreuse the public is not at all of this opinion, seeing that whereas the Liquidator sells 50,000 litres of Chartreuse the Carthusian Fathers sell 700,000. Therefore out of five individuals of the public there is one who finds that the new Chartreuse is analogous to the old and four who have a different opinion. Therefore the proof would be rather in favor of the new Char-

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treuse than in the Liquidator's to speak of the unanimity to which you make allusion.

x-Q. 19. I did not ask you if there was unanimity, I only supposed the event of unanimity. Then we may say that the Carthusian Fathers have perhaps a system, a secret for the manufacture of their Chartreuse without there being a secret for the manufacture of Chartreuse ?

A. Ah, yes, but there the distinction becomes a little
1142 specious, because there is not their chartreuse and the chartreuse, it is they who have created a liqueur named Chartreuse which is their property: mark La Chartreuse. It is a fixed liqueur, it is not at all analogous to curaçao of which you speak. Curaçao is an orange peel which has been put at a given moment in alcohol to macerate, which makes a liqueur like cassis, orange, lemon, it is the property of everybody. Curaçao is not a liqueur of mark, any body can make curaçao ; but Chartreuse, that is a special thing, like Benedic-
1143 tine : they are products peculiar to and the property of a given house. Of course I am not entering into the legal point of view, which I have nothing to do with, but the question is quite different in the example you choose for curaçao, or for mint which you might just as well have taken.

x-Q. 20. Do not the primary ingredients play a pretty important part in the manufacture of liqueurs ?

A. Ah, that! Primary ingredients play an important part in the manufacture of liqueurs.

1144 x-Q. 21. Even a very considerable role ?

A. That equally depends on the kinds of liqueurs, but it is certain they play an important part. The alcohol for instance : you have distillers who will tell you that good absinthe cannot be made from commercial alcohol, that wine alcohol is necessary. Others will say: "I make an absinthe with commercial alcohol as good as Mr. Cusenier makes with wine alcohol."

x-Q. 22. Whereas you will say that the best liqueur is made with wine alcohol ?

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A. The word " best " when applied to liqueurs, has not an absolute meaning : that depends on the point of view which one takes. Thus, in the Commission, in which I took part, to which I made allusion at the beginning of my deposition, we were two sides : the element of merchants and business men on the one hand, the element of scientists, members of the Academy of Medicine on the other hand, and we had to study the question of hygienic control of beverages and liqueurs. Well, we disputed somewhat about the 1146
word " best," the best liqueur for the distillers was the worst for the hygienists. I take for example absinthe. It is almost universally admitted that the best absinthe is that of Pernod's in the distilling world. The hygienists said : " It is the worst because it contains more alcohol and essences." A distiller, when you present different liqueurs to him and say to him " Which is the best ? ", you will not find three distillers who will give the same opinion. One will say : I prefer such and such a product to predominate, 1147
another will prefer some other one, one will like better alcohol of wine strongly aromatized, another commercial alcohol. The word " best " cannot be applied to liqueurs ; it is a question of personal opinion.

x-Q. 23. Has not the nature of the primary ingredients very much to do with the superiority of Bols' curaçao ?

A. Will you allow me to ask you what you call the nature of the primary ingredients ?

x-Q. 24. The qualities ? 1148

A. Evidently the qualities of the primiary ingredients are of importance. Curaçao has orange peel as a basis ; it is evident if you use, for instance, musty peel you will have a liqueur which will not be so good as that made from absolutely wholesome peel. If you use cheap alcohol and which is badly rectified, you will have a product not so good as if you bought alcohols properly mixed, from the center of distilling, that is incontestable.

x-Q. 25. Have you ever heard that Chartreuse owes

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much of its bouquet to the plants gathered at the Grande Chartreuse ?

A. That is a thing I have heard.

x-Q. 26. Very often, have you not ?

A. Often.

x-Q. 27. Do you believe that ?

A. Seeing the experience I have of the treatment of plants from the point of view of obtaining their aroma, I do not think that in such a fairly wide area it has any
1150 influence. Between the plants gathered, as I said concerning essence of mint, in France or in England or in Japan, I believe there is an influence, but between plants gathered in a fairly wide area, I do not think that there is a great influence.

x-Q. 28. Excuse me, you must know the difference between the growths of Burgundy, do you not ?

A. Yes.

x-Q. 29. Are not the growths there very near one another ? Are not the vines from which the different
1151 brands of Burgundy are obtained very near one another ?

A. As to site, not as to taste.

x-Q. 30. Yes, do they not differ very much, their tastes ?

A. Yes, but I do not think that one can, on account of difference between wines, draw conclusions for the difference between essences. For me they are not at all identical bodies. One cannot say that because the same vine, for example, in different soils gives dis-
1152 tinctly different tastes, that it will be exactly the same thing for the aroma of plants.

x-Q. 31. What is the essential difference between the vine and plants, then ?

A. From what point of view ?

x-Q. 32. From that point of view ?

A. In the first place, what is treated in the vine is the fruit, whereas for plants there are very few of which the fruit is treated. On the other hand, in the part that is treated of the plants, this part of the plants which is utilized yields an essential oil, that is to say

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a body containing cent per cent of aroma, whereas when you treat the grape you obtain an infinitely small proportion of aromas with an enormous proportion of watery substances. The two bodies, in my opinion, the grape and essential oils, can in no way be compared one with the other.

x-Q. 33. Does not the difference between the grapes and the wines which are obtained from these grapes come from the differences of soil?

A. I may tell you that I can only answer these ques- 1154
tions according to the knowledge, which is quite general, which I may have. I do not specially follow the questions of wines, far from it, and therefore I only have a rather vague knowledge of the subject. But it is quite evident, and the truth prompts me to say so because it is recognized by everybody, that the question of soil is of importance for wines, that is indisputable.

x-Q. 34. If proofs were shown to you—it is a supposition, I do not say they will be shown to you—that 1155
distillers could in fact produce a liqueur that could be called Chartreuse just as well as the distillers can manufacture liqueur which is called Curaçao, would you not admit that the Chartreuse liqueur made from the choicest of plants, having the finest perfume would be superior to the Chartreuses manufactured from plants which had less perfume and which were less carefully chosen?

A. I do not understand the question very well.

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At the request of Mr. Kelly the stenographer reads over Question No. 34.

By Mr. Pillet (the witness): Ah, good! Well, it is evident that if the primary ingredients are not the same, if certain plants are of a superior quality, on account of their choice, to those used by another distiller, he who used the choice plants would obtain a different product from the one who did not use choice plants. Now, would this product be superior or inferior?

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That returns to the order of ideas which I explained to you when I said it was simply a matter of appreciation—it still being understood that the proof, of which you spoke just now, has been shown.

x-Q. 35. You have said that the formula could not be found—the formula for the manufacture of Chartreuse, by chemical analysis, and you have said that it could not be done by tasting ?

A. That is my opinion.

1158 x-Q. 36. Then how do you explain that many manufacturers make a liqueur which resembles Chartreuse so much that the public does not find any difference?

A. It is certain that many people manufacture liqueurs which approach Chartreuse. Now, that the public does not find any difference, that is a thing to be proven. One may imitate a liqueur, one may make falsifications, counterfeits, imitations—call it what you like, it matters little—but what I maintain until it is absolutely proved to the contrary is that it is mate-

1159 rially impossible to make a liqueur identical to a given liqueur, Chartreuse or any other—I do not speak exclusively of Chartreuse. Liqueurs may be made which approach them, I agree to that, but to go and say : " There is a liqueur, here is another, which, without knowing the secret of manufacture has been made just the same and which is identical to that one," I say it is impossible.

x-Q. 37. What does the public look for in a liqueur ?

1160 A. That depends ; there are some who look for the strength, others the bouquet ; others seek products of some sort or the other which bring on dizziness, that depends absolutely on the individual.

x-Q. 38. The public that drinks Chartreuse, what does it seek ? It is the taste, is it not ?

A. It is an impression on the palate.

x-Q. 39. It is an impression on the palate ?

A. Either Chartreuse or some other liqueur.

x-Q. 40. If a liqueur is able to produce the same impression on the palate as that which the Carthusian

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Fathers produced formerly, is he not able to say, he who makes it, that he manufactures Chartreuse?

A. In my opinion it seems to me impossible to prove that the product can produce the same impression on the palate of the individual, it is a thing which is not measurable.

x-Q. 41. We are in the heart of metaphysics, are we not?

A. It is evident, you will not find two persons who will appreciate the same product in the same way, that 1162
is impossible. It is said that tastes and colors are not to be discussed: it is a matter of personal appreciation.

x-Q. 42. You have said—did I understand properly?—that the variation between the essences of the same plant coming from the same origin, from year to year, was very small?

A. Yes, was of quite a secondary order.

x-Q. 43. You also have written a book, have you not, Mr. Pillet? 1163

A. Yes.

x-Q. 44. And you have published a table, have you not, of variations?

A. Several, for certain essences.

x-Q. 45. I produce your book "Les Huiles Essentielles et leurs Principaux Constituants" and I refer to page 169. I would point out to you that in the State of Michigan, No. 6, there was—first crop of 1893—a total of menthol of 50, and that No. 8, same State, same date, it only produced 32.6. 1164

A. Yes.

x-Q. 46. Do you not consider that a considerable variation?

A. From the point of view of chemical analysis, yes, it is considerable, but from the point of view of the general constitution of the essence, you know, of all that is formed by the essence, they are variations which are not of great importance. There, evidently, you see, it is a question of—I do not remember, you know, from what scientific documents these figures were

1165 established—it is evidently a question of essences coming from regions far apart, as I told you a while ago, did I not, that I admit that in a perimeter relatively somewhat extensive, the plants, from the point of view of essential oils, have not a very great variation in constitution. But the State of Michigan, you know it better than I do, is vast and the cultivation of the mint plant which is carried on in the State of Michigan may differ by several hundreds of kilometres. There
1166 may be more difference between this essence of mint from Michigan and the second one, from the point of view of distance, than there is between an essence of mint from France and an essence of mint from Mitcham, England.

x-Q. 47. Is there anything in this book which indicates what the distance between the two may be?

A. No. When we compiled this work we gathered together scientific documents from many publications, for they are not analyses really made by us; we took the
1167 the works published in the United States, by American chemists, just the same as in England, in Japan and in France, and we collected these documents. But it is rare that for works of this kind those who do the compiling should say: "I gathered my product in such and such a latitude and longitude", so that we have not an absolute preciseness.

x-Q. 48. In the manufacture of essence of mint, does one use the plant in the fresh state or the dry plant?

A. Both.

1168 x-Q. 49. Preferably?

A. That depends absolutely on the situation of the factories. If they are in the middle of mint plantations there is every advantage in distilling the plants fresh. If it is far from these plantations, 100 or 150 kilometres, it is an advantage to distill the plants dry, for merely in the time it takes to send them, the plant in a fresh state would have commenced to ferment when it arrived. Moreover, in the liqueur distilling trade, distillers who use mint always use the mint plant in the dry state.

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x-Q. 50. And do you think one has an interest in establishing oneself in a region where the fresh plant can be gathered ?

A. When one wishes to make a specialty of distilling the essence of mint or geranium it is of interest to be where the primary ingredient can be had first hand, it is always cheaper.

x-Q. 51. And so as to be able to use the plant in the fresh state ?

A. Yes, because the plant can thus be obtained 1170
much cheaper but the essence obtained, either in the fresh state or in the dry state, is the same: there is simply the difference of the yield.

x-Q. 52. I find on page 162, of your book, which I show you: "There is an advantage in not allowing the mint to become dry, the fresh plants producing finer essences and more agreeable to the taste."

A. That is a matter of appreciation, of taste, that; according to the manner in which you look at it, either from a chemical point of view, or a tasting point of 1171
view, which also happens for our products, the point of view will be totally different. You have distillers, making a specialty of essence of mint, who pretend that the best mint is that which grows on French soil. Thus, at Montauroux there are two or three who maintain that there is no better mint than theirs. Some customers say: "I want the Vaucluse mint," others say: "I want mountain mints, from the region of Carpentras." In the same way you have appreciations on the question of soil, just the same as you have dif- 1172
ferent appreciations on the question of mint being fresh or dry.

x-Q. 53. But still, your personal opinion is that there is an interest—

A. I, myself, distil fresh mints.

x-Q. 54. You prefer them in the fresh state ?

A. I prefer the fresh mint, for this country mint. Is it written what mint, that ? Peppermint—Yes, that alludes to the mint from Grasse, the mint of the region.

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x-Q. 55. Let us now pass—

By Mr. Rocques: You have other documents there, in the Bulletin Industriel et Scientific de Roux et Bertrand, in the April number, 1906. Absinthes of the same origin, but of different years have been distilled, and the active principle, the interesting principle, the tuyone, in 1900 exists in a proportion of 8.4%, and in 1905
1174 in the proportion of 3%.

By Mr. Pillet: That makes a difference of five years.

By Mr. Rocques: Evidently.

By Mr. Kelly: You are acquainted with this Bulletin, are you not?

A. I receive it regularly, it is brought out by one of my collaborators in works of that sort, Mr. Charabaud.

1175 x-Q. 56. Who collaborated with you in this book which I have just quoted?

A. Yes.

x-Q 57. And you have confidence in it?

A. There are some works which are very well done, there are others very open to criticism, in this sense that they are more especially works of vegetable physiology which he has done in this work—I do not speak of the special article that you are considering—and his figures cannot, so to say, be verified, because he works
1176 on plants cultivated in a special manner, with special manures, in special soils, put under glass frames at certain times of the year, watered at other times.—That does not correspond with what happens in nature; that is nursery garden cultivation with a view to determine the creation of a or of alcohol in the plants. These works have some value from the point of view of vegetable physiology, but from the commercial point of view they are open to criticism.

By Mr. Rocques: It is not a question of those works.

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By Mr. Bonnet: Will you allow me? What essence is in question?

By Mr. Rocques: Absinthe. It is not a question of those works, of those works on the matter of variation of the constitution of essences according to cultivation. It is simply a question of an essence of absinthe, of wild absinthe—which is not at all the same case, and of absin he collected in the same region, cut in the same mountain—at Castres, he mentions 1178 the place—in 1900 and 1905, which came from plants having the same origin. Therefore we are considering the case of a well ascertained plant, collected in the same place and distilled in two different years. I remark a variation in the tuyone which is considerable, since it is—

By Mr. Bonnet: Will you please tell me the difference?

By Mr. Pillet (witness): There is a difference of five years. These two essences cannot 1179 easily be compared with one another, because though they were collected in the same spot there might have been in five years important variations in the soil on account of cultivation. That is what Mr. Charabaud means to prove, that the nature of the soil may have a considerable influence in a period of five years.

By Mr. Rocques: It is the same soil.

By Mr. Pillet: You know very well that when it is a question of cultivation it is difficult 1180 to make the same cultivation at the same place during five years.

By Mr. Kelly: It is not a question of cultivation, but of wild absinthe.

By Mr. Rocques: Wild, collected in the same place. That seems easily comparable, you cannot find anything more comparable, and the variation is very important.

By Mr. Pillet: Well, you see, I read the conclusion of the work. You said that the

1181 tuyone was the principal constituent and that it had varied in considerable proportions. But the conclusions are: "It will be seen that "these essences only contain, which is the "reverse of what takes place in the essences "from America and from the Parisian district, "small proportions of tuyone, on the other "hand they are very rich in alcoholic prin-"ciples. It is not, therefore, tuyone but tuyol
1182 "which is the principal constituent." And if I take this tuyol propotioned in a total of alcohol, I see that in 1900 it is 78.9 and in 1905 it is 80.6, the difference is therefore of very little importance.

x-Q. 59. That is to say that an essence is composed of different elements?

A. Yes.

x-Q. 60. And that these elements may differ greatly
1183 from year to year?

A. You see in what proportions the principal element may differ; here it varies by 2% in a period of five years.

x-Q. 61. And the secondary element?

A. It has no importance.

By Mr. Rocques: It differs by 50%.

By Mr. Pillet (the witness): But that is 50 per cent. in proportion to its own figures, but 4
1184 per cent. in proportion to the sum total, it is a question of percentage.

By Mr. Rocques: Yes, but the opinion he gives may be disputed that that is the principal element.

By Mr. Pillet: Every opinion may be disputed. Remark that there is nothing commercial about this essence of absinthe, for from the commercial point of view it is the tuyone which is the principal element.

By Mr. Rocques: It is simply to indicate

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that an essence furnished by the same plants, cultivated in the same soil, varies in a notable proportion year by year.

By Mr. Pillet: But I never said the contrary, but that the active principle of this essence, a year apart, varies in very unimportant proportions—and allow me to add that this variation has no importance from the point of view of the composition of a standard alcoholate: that was the basis of my evidence.

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By Mr. Rocques: A little further on there is the essence of "sauge sclarée" (Clary); that is a question of principle, is it not? it is admitted invariably that it is the acetate of

that is the interesting product. Here is essence obtained, furnished by two samples of plants, distilled by us and coming from the same district, in the neighborhood of Grasse: the one obtained in 1904 and the other in 1905. Here are the proportions of acetate 1187 of 43.1 in 1904, 25.7 in 1905. That is again an important difference, and he adds: "It may be seen what notable differences two essences of the same origin may present according to the year of the harvesting." There you have important variations; an essence is not a fixed thing.

By Mr. Kelly: That is page 37.

x-Q. 62. Do these variations astonish you much? 1188

A. There is nothing to be astonished or not astonished at in those matters; what should I be astonished about?

x-Q. 63. At least you, in your experiments, you also have found from time to time considerable variations?

A. Yes, but I must tell you that from the point of view of commercial experiments it is exceedingly rare that anyone goes in for those studies, they are laboratory studies, those analyses are never done commercially. The essence of clary, for the ten years that I

1189 have been at the head of my firm, and from the point of view of essential oils it is perhaps the most important firm—I have not sold 500 grammes of that essence. Those works are done by professional chemists, who on their own personal account study certain essences which are not in general use, because on the essences which are in general use there is nothing more to be learned from the scientific point of view for them to make a scientific work.

1190 x-Q. 64. How much essence of vulnerary have you sold?

A. Essence of vulnerary? Oh! also very little, perhaps an average of a kilogramme per year. Very little essence of vulnerary is sold. It is used as a herb, but as an essential oil it is very little used.

x-Q. 65. Then you could not state the degree of variation of essence of vulnerary year by year?

A. Oh, no, that is a work which so far as I know has never been done.

1191 x-Q. 66. If the elements of which an essence is composed vary from year to year, does not that necessarily render the index of iodine variable?

A. I must tell you that personally I have never studied the method by the index of iodine from a completely scientific point of view. When this method appeared I procured the apparatus made by a Paris firm, the firm of Desjardins, for the practical application of that method, and precisely at that time I had to make experiments for the Extra Parliamentary Com-

1192 mittee of Alcohols: I made some proportionings of liqueurs by the index of iodine method, and having done that I remarked that it showed an interesting degree of correctness from the commercial point of view, but you must ask the inventors for a complete study of that method. It is a long task to set on foot a method of scientific analysis, and it is not we manufacturers who have the necessary leisure to attend to these questions of a purely scientific order.

x-Q. 67. And when the essence that you manufacture differs by the index of iodine, do you modify your

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standard essence according to the results produced by the index of iodine?

A. If I modify my—

x-Q. 68. Your standard essence?

A. But the method of the index of iodine does not give me the composition of the essence, and when the index of iodine differs between two essences that variation does not show that it is due to a different strength in cetone, aldehyde or phenol.

x-Q. 69. It is impossible to tell whether these three 1194
elements have varied by the method of the index of iodine?

A. Absolutely, it is not made for that.

By Mr. Rocques: I would like Mr. Pillet to state precisely the manner in which he made his standard alcoholate.

x-Q. 70. Will you state precisely the manner in which you make the standard alcoholate? 1195

A. It is an alcoholate which always contains the same quantity of essential oils.

By Mr. Rocques: In weight?

By Mr. Pillet: In weight.

By Mr. Rocques: Then its index of iodine may vary?

By Mr. Pillet: But to what extent? Exceedingly small?

By Mr. Rocques: That depends on the varia- 1196
tion of the composition of the essences.

By Mr. Pillet: The variation is very small.

By Mr. Rocques: There we do not agree. For you said a while ago: I put a given quantity of essences in a litre of alcohol—that is all right. After that I take the index of iodine of this alcoholate. One of two things: either it coincides or it does not coincide with the weight. If it does not coincide do you modify your proportion of plants?

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By Mr. Pillet: It cannot help coinciding. This is how it is done. Every year I make essence of mint, every year I take, or I can take, the index of iodine of the essence that I have obtained. I take 2 grammes of it, I put it into alcohol, and I determine the index of iodine of that alcoholate; during the whole year the analysis of my alcoholate must give me the index of iodine—

1198 By Mr. Rocques: Of the same year, but of *different* years?

By Mr. Pillet: I make an essence of mint with the year's plants and I determine the index of iodine with that essence of mint. Then I take a certain weight of it, two grammes for example, I put it in a litre of alcohol at 80 degrees. I determine the index of iodine of that alcoholate, 1.98 for instance—all question as to the exactness of figures apart, of course. Well,

1199 to have an alcoholate always identically the same it is necessary that in always using this same essence of mint the analysis should give me an index of 1.98 for my alcoholates which I deliver to the trade.

By Mr. Rocques: For that particular year.

By Mr. Pillet: For that particular year.

By Mr. Rocques: But for the following year, as there is a variation between the two years?

By Mr. Pillet: I shall again determine the

1200 index of iodine of the essence of that fresh year.

By Mr. Rocques: But as there may be a variation of the elements which compose the essence?

By Mr. Pillet: I consider I, personally, I have not made any deep study of the index of iodine, but I consider according to the results I have seen that taking one year with another the variations are of an extremely minute nature.

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x-Q. 71. How long have you used the system of the index of iodine ?

A. For the last two years.

x-Q. 72. Do you know when it was invented ?

A. Three or four years ago, I believe.

x-Q. 73. What did you do before that ?

A. I simply weighed.

x-Q. 74. You simply weighed ?

A. And remember that in practice I very rarely determine the index of iodine : I weigh my essences. It 1202
is of no great importance in my business to make that test.

x-Q. 75. You content yourself with weighing ?

A. With weighing ; but when I studied these questions for the purposes of my report to the Committee on Alcohol I studied this method and I had it applied moreover at the Municipal Laboratory and by Mr. Rocques for the analyses which were supplied to that Committee, and we found that it gave an exactness quite sufficient to establish, if the Government thought 1203
proper, a hygienic control over liqueurs. That is the purpose for which we did it.

Re-direct Interrogatories by Mr. J. Bonnet :

Re-d. Q. 1. In my examination, as in Mr. Kelly's examination, if I asked your opinion about the application of the method of the index of iodine, it was not because I was informed that the Carthusians had recourse to that particular method. It may be and it is 1204
even certain that they use other methods of which I know nothing. I am satisfied with quoting the method of the index of iodine to prove that there is at least one method by which standard alcoholates can be obtained, whatever may be the yield in essences of the plants each year.

But just now Mr. Kelly, assisted by his adviser, Mr. Rocques, the chemist, brought to your notice some plants, for instance Michigan mint, and pointed out the notable differences of the plant in essence from one year

1205 to another. Well, we are going to assume, if you like, a still more unfavorable hypothesis. Suppose that this present year the plants contain ten times less essence than last year. If, by the method of the index of iodine or by any other method, you have determined last year the strength in essence of the plants, and if you determine this year the strength of the same essence in the plant, would it not be possible by a simple calculation of proportion to determine the quan-
1206 tity of plants that must be treated to have the same quantity of essence in solution?

By Mr. Kelly: That is a leading question, Mr. Bonnet.

A. I do not consider it a leading question but as not a precise one, and I will explain why. Mr. Bonnet evidently is a bit confused in his question. Mr. Bonnet speaks of the application of the method of the
1207 index of iodine to determine the strength of essence in a plant. The method of index of iodine is not used to determine the amount of essence in a plant. For a plant there is but one method: that is the distillation of that plant by steam; when once the essential oil has been obtained, whatever may be the proportion in the plant, the index of iodine of that essential oil is ascertained. And to reply to your question of proportion, we know exactly from one year to another what is the proportion of plants that must be used to have an al-
1208 coholate containing the same quantity of essence when once we have extracted from 100 kilogrammes of that plant the essential oil which it contains. This year I treat 100 kilogrammes of mint, which gives 300 grammes of essence, next year 100 grammes. If I wish to make an alcoholate containing ten grammes of essence per litre of alcohol I shall have to put three times more plants the following year than the preceding year, since the plants contain three times less essence.

Re-d. Q. 2. Therefore it is possible with plants having

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different strengths of essences to always obtain the same alcoholate ?

A. Naturally.

Re-d. Q. 3. Do you know whether the Carthusians use mint in the manufacture of Chartreuse ?

A. Oh, I am quite ignorant of what enters into the composition of Chartreuse.

Re-d. Q. 4. Do you know whether the Carthusians use absinthe in the manufacture of Chartreuse?

Q. I reply that I am quite ignorant as to what en- 1210
ters into the manufacture of Chartreuse.

Re-d. Q. 5. Speaking, Sir, of a superiority of a liqueur, Mr. Kelly asked you if the superiority of a liqueur was not due to the products used, to the primary ingredients. Is it not also due to the manufacture, to the processes, to the manner in which the primary ingredients are treated ?

A. But I replied to that question in the affirmative. I said that what constituted the superiority of liqueurs of mark was the secret of manufacture of the firm, and 1211
by secret of manufacture I took care to include both the primary ingredients and the process employed for the treatment of those primary ingredients.

Re-d. Q. 6. Mr. Kelly, in order to establish that on this point, in the case which interests us, there was no secret of manufacture, said to you : If you were shown proof that a liqueur had been obtained, a chartreuse in this case, the same as that manufactured by the Carthusian Fathers, would you not naturally conclude that there was no secret of manufacture ? I presume 1212
that I am faithfully reproducing the question put.

A. Well, I am going to say to you : Is one authorized to declare because a product has been obtained producing the same impression on the palate, is one authorized to say that the same methods have been employed, the same primary ingredients, when it concerns a body of so complex a character, of a mixture so complex as a liqueur ?

In the first place I make a reservation as to the

1213 early part of your sentence, saying : " It being established that the same impression has been obtained."

Re-d. Q. 7. I assumed that hypothesis—

A. For I cannot admit that hypothesis.

Re-d. Q. 8. Shall we consider that hypothesis ?

A. Very well.

Re-d. Q. 9. Suppose that the other side have obtained a chartreuse which gives the same impression, which produces the same sensation on the palate as the
1214 Chartreuse of the Carthusian Fathers. Is one, consequently, scientifically authorized to say that it was because recourse was had to the same primary ingredients and they were treated in the same manner ? Is there not a possibility, cannot the possibility be conceived that the same results might be obtained by the aid of different means, having regard to the complex nature of the mixture ?

A. For me it appears impossible, if one has not been exactly instructed as to the formula on the one
1215 hand, nor as to the process used on the other hand, that one could chance exactly on that same formula and those same processes.

Re-d. Q. 10. Suppose that in the Chartreuse there are fifty essences used in different proportions ; if a Chartreuse having the same taste has been obtained would one be authorized to say that it was obtained with the fifty essences and in using those essences in the same proportions as the proportions used in the real Chartreuse ?

1216 A. It seems to me impossible to reply to that question.

Re-d. Q. 11. Do you know, Sir, the methods used in algebra to solve equations with several unknown quantities ?

A. Yes—I did know them at any rate.

Re-d. Q. 12. Let us take an equation with twenty unknown quantities, and which gives a certain result. Would it not be possible to get the same result by varying in sufficiently multiple and sufficiently

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numerous proportions the unknown quantities of the equation ?

A. In mathematics, yes.

Re-d. Q. 13. Well, it is this mathematical conception that I would apply to the trade in essences in which you are extremely competent, and I say to you : Can it not be conceived, having regard to the great number of essences at disposal, that a given result may be obtained from the point of view of taste, by the help of different essences in different proportions in the 1218 manufacture of liqueurs in general ?

A. It might be got at, but it would be an extraordinary chance.

Re-d. Q. 14. Well then, should it not be concluded that one is not authorized to say, that because the result from the point of view of taste has been attained, that exactly the same methods have been employed, the same primary ingredients, and in the same proportions ?

A. Well, I should not think so. 1219

Re-d. Q. 15. Will you develop your idea, or develop your denial ?

A. There can only be an affirmation in any reply unless there is some mode of examining same. It is not a matter of saying : " Yes, the thing is possible," it must be proved. Well, it is in my opinion absolutely impossible to prove that in obtaining a liqueur, a body of an extremely complex nature, there have been employed exactly the same processes, the same primary ingredients in the same quantity as that 1220 that was made by a neighboring manufacturer ; it is impossible to prove it.

Re-d. Q. 16. Mr. Kelly in speaking to you of the culinary recipe as opposed to the secret said : A culinary recipe varies according to the taste of the operator—say the cook, if you like—whilst a chemical formula cannot vary. But is the chemical formula all the secret of the manufacture, or is it but an element of the secret?

A. But in distilling there is no chemical formula.

Re-d. Q. 17. I presume that Mr. Kelly meant to say

1221 the proportions of the bodies, and if you like we will assume that hypothesis. If in a process of manufacture of liqueurs the proportion of bodies used of component elements is known, would all the secret of manufacture be known?

A. Not at all, because as I said the secret is composed not only of the proportion of the matters employed but of the manner in which they are treated. It is necessary, therefore, to know the list of plants and
1222 the proportion in which they are used, and to know the manner in which they are treated, and it is that which, in my opinion, it is impossible to determine if one is not fully initiated into the manner of proceeding special to each firm.

1223 SESSION OF MONDAY, May 28th, 1906, continued.

CHARLES LOUIS MAURICE SANGLÉ-FERRIÈRE, of 32 Boulevard Saint Germain, Paris, aged years, chemist, having been produced, sworn and examined on the part of the Plaintiffs, doth depose and say as follows:

DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiffs:

1224 Q. 1. What is your name, Sir?

A. Sanglé-Ferrière.

Q. 2. What are your christian names?

A. Charles Louis Maurice.

Q. 3. Your age?

A.

Q. 4. Your residence?

A. No. 32, Boulevard St. Germain, Paris.

Q. 5. Your profession?

A. Chemist, and assistant chief of the Municipal Laboratory of the City of Paris.

1225

Q. 6. Will you let me know your standing, your works ?

A. I am a qualified ex-pupil of the Museum of Natural History. I do not exactly retain the list in mind ; I have collaborated in several works on the Laboratory, especially documents—

Q. 8. I will have, however, during the course of the examination, an occasion of quoting a few of them.

A. I am also a collaborator in the Grande Encyclopedia, now—in several important scientific publications, 1226
all special works and publications, and then, if you will allow me, I am laureate of the Académie de Médecine for a little work, which will certainly be spoken of presently ; in 1904, I obtained the prize Gui—

Q. 8. You allude to ?

A. To this little work.

Q. 9. To the work in which you related the process of analysis of essences with the help of the index of iodine, with Mr. Cugniasse ? 1227

A. In collaboration with Mr. Cugniasse, chemist at the Municipal Laboratory, we studied more particularly absinthe, and it was after these studies that we were led to apply the method of the index of iodine, which was employed for certain fatty substances. It gave us good results. Besides it has been recognized as such by the Commission of the Académie de Médecine, composed namely of MM.

and Henriot. And it was at the
report of Mr. that the prize was awarded 1228
to us.

Q. 10. Do you think it possible to make qualitative and quantitative analysis of Chartreuse, with a view to reconstructing this liqueur afterwards by synthesis ?

A. I shall reply in an absolute manner : no, except in what concerns, I shall say, the common elements of the Chartreuse liqueur, that is to say, as in all liqueurs, the alcohol element, the sugar element,—without however being able to be certain as to the sort of alcohol employed, as to the sort of sugar

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employed, which nevertheless, in the particular case is saccharose, without my being able to say if this saccharose comes from cane or from beet-root, for instance.

Q. 11. It is possible to ascertain the composition of the mixture of essences?

A. As regards essences, we could perhaps give a global appreciation of these essences by the method of the index of iodine, but as to the nature of these sub-
1230 stances, much less their proportion, I consider personally that there is impossibility.

Q. 12. Do you think it possible to obtain this result: the analysis of chartreuse and its reconstruction with the help of tasting?

A. Tasting is evidently a direction, an excellent thing for wines, which gives constant results, and still in certain cases, which may perhaps be tainted with defects. It can be exact also for certain dry spirits: Cognacs or brandies, but as to sweet wines, liqueurs,
1231 particularly Chartreuse, I consider that tasting can give no indication, considering the thickening which results from such a sweet such an alcoholic liqueur as Chartreuse, and that, under these conditions, the perception of essences is impossible, much less their proportions.

Q. 13. Do you, in the Municipal Laboratory, attribute a great importance to tasting?

A. Very relative, and as to the liqueurs of which I have just spoken and sweet wines, trial by tasting is
1232 never made, we consider it absolutely null.

Q. 14. In which cases do you resort to tasting?

A. For wines, above all when you have to classify natural wines or wines for mixing. It is an interesting element for analysis, that allows us—still as a direction—to direct our search in such or such a sense and to see if the wine is genuine. For nothing is easier than to bring a liquid having the appearance of wine, the alcohol, the sugar, and which in the analysis gives excellent results, whilst tasting allows one to judge

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that it is not wine. Here is the only case in which we have confidence in tasting.

Dry spirits, such as brandies, whiskeys, are also tasted, but I consider that it must be done by very competent persons, and their opinions are not always —are debatable.

Q. 15. You are the author, with others—Mr. Girard, Director of the Municipal Laboratory—of a work which has for title: "On Alimentary Substances and Investigations into their Adulteration." I read, page 1234
281, under the heading "Tasting," what follows:

"All analysis of alcohols or of spirits should be preceded by the tasting, done by a practiced expert, this operation gives indications which, taken together with the results furnished by the chemical examination, facilitate the conclusions to be drawn from the analysis. The tasting of alcohol is done in a wine-glass," etc.

A. Yes.

Q. 16. I should like you to develop for me a little 1235
your point of view about tasting, to complete the explanations that you have given.

A. That is aimed at the tasting of brandies in particular.

Q. 17. It is the analysis of alcohols?

A. Because, in what concerns wines, it is the case in which tasting is bound to give the best results. For alcohols, these results may be more doubtful, and in what concerns liqueurs, I esteem it to be without value. In what concerns spirits, tasting will allow one 1236
to see—to suppose, it is only an indication—if the alcohol can really come from a wine alcohol or from an industrial neuter alcohol, or from a mixture of the two; it gives an appreciation which the analysis then takes upon itself to confirm.

Q. 18. Besides I only cite works signed by you. I see another one here, but as it is not by you it will not give rise on my part to an observation.

Could you give me a definition of the secret of

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fabrication, a scientific definition, out of reach as it were of all criticism. What is a secret of fabrication?

A. A secret of fabrication, outside of industrial secrets.—I only consider the secret as applied to the making of an article of food, of a product like Chartreuse—it is evident that according to me a secret is a process of fabrication which chemical analysis and tasting would not allow to reveal, for instance—I have made myself understood?

1238 Q. 19. Do you think that the fabrication of the Chartreuse made by the Carthusian Fathers contains a secret of fabrication?

A. According to me there is no doubt about that; considering that this secret can be constituted, naturally, by an ensemble of observations which cannot be formulated, made by them, which have led them to establish a type of liqueur which they alone can prepare to obtain the same products of an absolute constancy as to quality, as to taste, from the point of view

1239 of taste.

Q. 20. Sir, you are the author of the method of analysis by the index of iodine?

A. Yes.

Q. 21. Mr. Rocques, in his preceding examinations, told us that plants varied, that the capacity in essence of the plants varied every year. In truth it is conceivable that according to the temperature the yield in essence is more or less considerable. Mr. Rocques also declared to us that a given essence varied as to

1240 the composition of its constituent elements: ethers, aldehydes, cetones, etc.

From your experience, when one compares an essence of one year with that of the preceding year, is the difference of composition in its constitutent elements appreciable to such a degree that the application of the method of analysis by the index of iodine gives perceptibly different results?

A. I could also reply in the affirmative by referring you to our work: we have examined this question,

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which was very important, and I reply categorically : no. The differences can exist as to quantity, but as to the nature of the constituent elements of these essences and which can be revealed by the index of iodine, these differences are extremely slight and only attain hundredths. We established it for different types of essences of the same origin and of different epochs : these differences are very slight.

Still I would point out that in our tables of analysis we have perhaps some appreciable differences, it is 1242 that for essences of different origins the same thing happened—I insist on this point—as for essences of the same origin and of several years because the number of years was smaller than one year ; these differences will exist for the same essence of the same year.

Q. 22. The work to which you allude, and which I have consulted, which gave rise to a discussion between Mr. Rocques and me, unfortunately, only considers and compares essences which have five or ten years of 1243 difference in age. I should like to ask you if the works to which you have personally applied yourself authorize you to say that when essences have not more than one year's difference in age, the results obtained by the method of the index of iodine are perceptibly the same ?

A. Absolutely, absolutely the same up to a few hundredths, and if I allow for the fact that we are only speaking of concrete essences, that is to say without any dilution, these very slight differences are null when 1244 we consider an alcoholate where these essences are diluted. We should again divide these differences of figures by the quantity of alcohol in which these essences are contained which means that if we have a difference of a few hundredths in a pure essence, if we take an alcoholate containing 1, 2, 3 grammes of this essence, we should divide our difference in the proportion of 1, 2, 3 to a hundred.

Q. 23. Do there not exist any methods, can one not

1245 conceive methods allowing one to obtain fixed alcoholate, in spite of the variation in the composition of essences in their constituent elements ?

A. Yes, the thing is perfectly possible, first by the proportioning of the essences without even having recourse to the index of iodine. It is the process indicated by Schimmel, in particular, who recommends and operates the mixture of essences of different plants by means which can allow these plants of different
1246 harvests to be mixed and an average to be established. And it is partly these practical means which may constitute a secret.

Q. 24. The witness who preceded you, Mr. Pillet, was examined by Mr. Kelly about the point of knowing if the nature of the essence varied in a given plant according to the soil. And Mr. Pillet replied that when the places where the plants were gathered were not very far distant, the differences were not appreciable.

1247 Mr. Kelly then cited the example of the wines of Burgundy and said : do there not exist in the soil of Bourgogne, products almost neighbours, touching each other, so to say, and having absolutely different bouquets ?

As you are sub-director of the Municipal Laboratory and as it can be said that the principal analyses of the Laboratory concern wines, I should wish to have your opinion on the bouquets of wines in general.

A. Exactly.

1248 Q. 25. What is the origin of bouquet of wines ?

A. The case that Mr. Kelly cited is quite different, considering firstly the differences about which I gave an explanation a moment ago, which can exist between essences of the same origin but of different soils : we obtained very similar results. And in any case, this essence is only the state of the plant in its full period of maturity, in which this essence is extracted by distillation or infusion in alcohol : this product which exists in its natural form is only taken away, extracted

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from the plant or the flower where it is contained, separated from it.

In wine it is quite different: the aroma and the bouquet depend above all on the fermentation, it is the alcoholic yeast that intervenes, and which as the result of problems still unknown, works upon the wine in such a fashion that the products obtained can be different to the taste according to the aroma, according to the bouquet.

This fermentation as is known, is accompanied by a 1250
formation of others of secondary alcohols, of superior alcohols which constitute the bouquet proper of a wine. That occurs solely under the effect of fermentation, and this fermentation may vary according to the conditions in which this fermentation is effected and the yeast with which the work is done. It suffices for me to recall the selected yeast of Jacquemin, which established a must and that by fermenting this must, a must X of a yeast of grape of Bordelais or of Bourgogne, in this must X a savour is produced like—I shall not say 1251
absolutely similar but which recalls the wines of Burgundy or of Bordeaux. Besides, this fact is, I think, absolutely incontestable, considering that it is not only my opinion but the opinion of all analogous chemists who have taken up this question.

The case is absolutely different.

Cross Examination by Mr. Kelly:

x-Q. 1. Do you think that the soil counts for nothing 1252
in the differences between the growths of the wines of Burgundy?

A. I esteem that above all it is the particular yeast that pre-exists, that nature has sown outside the grapes, which constitute, from the aromatic point of view, the principal lever necessary to the confection of these wines from the point of view of tasting.

From the chemical point of view, it is there above all that the soil would act, as also the temperature,

1253 from the point of view of the richness in saccharose, from the point of view of the acidity of the wine, more or less rich, as in the Bordelais, and less strong in Burgundy ; it is there where the vine comes in, but in what concerns the bouquet, it is, for me, fermentation and the products which result from it.

x-Q. 2. Do you think that by applying a yeast of Burgundy to a wine of Bordeaux, one can succeed in making a Bordeaux wine into a Burgundy wine ?

1254 A. Ah, absolutely, as I have just said, but on one condition nevertheless, it is that you will have completely detached the pre-existing yeast from the wine of the Bordelais. If you put your two yeasts together, they will gravitate together and engender products which will be neither Burgundy nor Bordeaux. But if you have sterilized. . . . Jacquemin made the experiment and it has been put into practice in some vineyards, it has given birth to a particular process of vinification.

1255 x-Q. 3. Do you know the different mints ?

A. The different essences of mint ?

x-Q. 4. The different kinds of mint, the different essences of mint extracted from different mints from different localities ?

A. Mr. Cugniasse and I applied ourselves to that, solely for our work on absinthes, and we made several indices of iodine with essence of mint, in a mint of the same origin we did not find perceptible differences.

x-Q. 5. But there is, is there not, a considerable dif-
1256 ference between the mint produced in France and the mint produced in England ?

A. That, outside of the index of iodine, I could not answer you.

x-Q. 6. That cannot give a difference ?

A. Absolutely not. Now, this difference . . . is it at the chemical point of view or is it at the tasting point of view that you place yourself ?

x-Q. 7. At both.

A. I think that from a chemical point of view it is . . .

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x-Q. 8. In your very interesting work "New Method of Analysis of Absinthes", page 53, I read the following paragraph :

" Essences being natural compound products, their proportional capacity in each constituent . . ."

MR. SANGLE-FERRIERE : Which means that they are complex products.

MR. KELLY : " * * * is therefore variable and 1258
can give different indices of iodine, for one same kind of essence."

A. Here we insist above all on the quantity of active principles which is contained therein. The proportion of essences contained in a plant can vary from year to year, as also the chemical constitution of these plants, I think I said so a moment ago. Thus the essence of annis may vary in a year from 80 to 90%, but then, just as the index of iodine may vary, from natural compound products, but not from products—we do not say 1259
it for essences of the same origin. For instance you mention English or another mint, we can obtain menthol in a less proportion under a different latitude, but if we consider mints of the same origin, we have an index of iodine very much the same.

Even admitting that these differences exist,—it is rare—it is the secret of him who makes this fabrication to obviate them by appropriate mixtures of his different alcoholates or even of different plants themselves. That enters, for me, into the secret of fabrica- 1260
tion, which belongs to him who makes it.

x-Q. 9. But, for instance, in essence of fennel, which contains a cetone : the phenol, will not the taste of the fennel vary with the variations of the cetone, of the phenol ?

M. SANGLE-FERRIERE : At what page, if you please ?

M. BONNET : Pages 54 and 55.

1261

A. I can only repeat to you what I said a moment ago. For essence of annis the case is absolutely the same, instead of its being—we have—extract from essence of fennel in a proportion between 80 and 100 per cent. But from the results obtained from essences of the same origin, if the proportions of cetone or of phenol can vary, we obtained indices of iodine always identical.

x-Q. 10. Not quite identical?

1262 A. A few hundredths out.

x-Q. 11. Do you know Le Bulletin Scientifique et Industrial of the establishment Roux and Bertrand and Sons of Grasse?

A. No, Sir.

x-Q. 12. Mr. Pillet, the witness who preceded you, knows it well, and I call your attention to the fact that in a work on essence of clary sage there is between the year 1904 and the year 1905 a notable difference in the acetate of linalyle.

1263 A. On essences of the same origin?

x-Q. 13. Of the same origin.

A. I did not apply myself to that question, I confess that it is difficult for me to reply.

x-Q. 14. Here is what he says:

"We have examined two samples of essences dis-
"tilled by us and coming rigorously from the same
"region, situated in the surroundings of Grasse. One
"of the essences was obtained in 1904 the other in
"1905. One finds as acetate of linalyle in the essence
1264 "of 1904 43.01 per cent, whilst in 1905 it has only 25.7
"per cent."

It is a considerable difference, is it not?

A. Will you allow me, Sir?

(The witness consults the Bulletin that Mr. Kelly has just read.)

—I confess that it is difficult for me to affirm or to deny this data, for after all the work is unknown to me, it would need to be gone over and redone.

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x-Q. 15. Do you know the work of M. M. Charabaud, Dupont and Pillet on essential oils ?

A. No, Sir.

x-Q. 16. Do you know if essence of mint is made with plants in a fresh state or in a dry state ?

A. I beg your pardon.—If the difference is—

x-Q. 17. If essence of mint is made with plants in a fresh state or in a dry state ?

A. That, that again is an industrial question, I again regret not to be able to reply to this question of a 1266 purely practical order.

x-Q. 18. Do you know curaçoa ?

A. That, everybody knows it.

x-Q. 19. Everybody knows it. Can all distillers make curaçoa ?

A. Yes, but I esteem that each curaçoa going forth from each different establishment, presents a taste, a particular bouquet which constitutes the mark of that establishment, and, for me, is the secret of that establishment. 1267

x-Q. 20. But there is no secret for the fabrication of curaçoa ?

A. That is to say that the recipes of curaçoa are found in special books, just as there can be recipes for absinthe, but that is no reason why with this data Absinthe Pernod can be made, having the qualities and constitution of Absinthe Pernod. It is the same thing for curaçoa : the processes adopted, the knack, "tranchage" and others can modify the taste and the savour of it. 1268

x-Q. 21. Still you would say that for the fabrication of absinthe there is no secret, is there ?

A. But I esteem—it is the Absinthe Pernod, for me, which is its sole value. No house can manage to make anything but an imitation, if you like, but to reproduce it exactly, I do not think so.

x-Q. 22. I did not ask you if there was a secret of fabrication of the Absinthe Pernod, but of the fabrication of absinthe in general ?

A. No, it is the same thing as for curaçoa, several

1269 formulæ have been published by which absinthe can be made. We ourselves have given some in our books.

x-Q. 23. Well, all distillers, all persons of the trade, can make an article that the public will recognize as being curaçoa or absinthe, can they not ?

A. That depends. From the point of view of the general sensation and the appreciation of the label everybody can call a product curaçoa or aniseed, but
1270 that does not alter the fact that the value of these products can be ascribed, by the choice itself of the customer, to the establishment which establishes a product similar as to composition and which is to the liking of the consumer : it is a product of mark, made by one establishment only, which by particular processes, arrives at this consistency of fabrication.

x-Q. 24. That is to say that Fockink has a manner of his own of proceeding which can be called the Fockink secret for curaçoa, and that Bols has a
1271 manner of his own for making curaçoa which can be called the Bols secret, is it not so ?

A. That, probably there is something, since their products differ from similar products, consequently I am of opinion that there is something in their fabrication.

x-Q. 25. But there is no secret for the fabrication of curaçoa ?

A. Ah, one can always say that one makes curaçoa, but everything depends on the value that it will have
1272 from the point of view of the tasting.

x-Q. 26. Still, when all distillers can make a liqueur that the consumer recognizes as being curaçoa or absinthe, one can say that there is no secret of fabrication for absinthe and curaçoa ?

A. But if there is a question of a product of mark ?

x-Q. 27. I do not speak of a product of mark, I speak neither of curaçoa Fockink, nor of curaçoa Bols, nor of absinthe Pernod, but simply of curaçoa and absinthe, and I ask you : Seeing that any distiller can make two liqueurs that the public recognizes as being

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curaçoa and absinthe, does not one deduce from that that there is no secret of fabrication for curaçoa and absinthe?

A. If the essential principle which characterises this product enters, for instance in curaçoa orange-peel, it could be said that it is curaçoa. Just as if for absinthe essences of fennel and annis are put, a mixture is produced which resembles absinthe, it could be called absinthe, since these elements are in it, but from there to constituting a product similar to a 1274 product of mark it is impossible.

x-Q. 28. Evidently, Pernod can have his own secret, that does not alter the fact that there is no secret of fabrication of absinthe?

A. For his absinthe, yes, but for absinthe in general, no.

x-Q. 29. If now the proof is brought—I do not say that it is brought but I take the hypothesis—if the proof is brought that any distiller, any man in the trade can make a liqueur that the public, the public at 1275 large, takes for Chartreuse, will it not be said in the same way that there is no secret of fabrication for Chartreuse?

A. No, because it is evidently impossible to give those products the value in tasting which alone belong to a liqueur, Chartreuse, for instance.

x-Q. 30. Pardon me. I suppose the proof is brought that a liqueur is manufactured which the public is not able to distinguish from the old Chartreuse manufactured by the Carthusians—this is simply a hypothesis— 1276 could it not be said that there is no secret of fabrication for Chartreuse?

A. I do not see your question very well.

x-Q. 31. We have agreed about this that there is no secret of fabrication for curaçoa and absinthe—

A. In general.

x-Q. 32. In general, since any distiller can make either the one or the other, then.

A. I again complete what I said a moment ago: it suffices to put absinthe in water or an infusion of

1277 orange-peel, but that does not mean that in tasting that can be compared to marks consecrated by use.

x-Q. 33. We are not speaking of curaçoa or of absinthe of mark, but of curaçoa or of absinthe, and I ask you if there is no secret of fabrication for curaçoa or absinthe, seeing that any distiller can make them, if the proof is brought to you that any distiller can make a Chartreuse that the public cannot distinguish from the Chartreuse made
1278 formerly by the Carthusian Fathers, would you not acknowledge for the same reasons that there is no secret of fabrication for Chartreuse. Pardon, I do not speak of the Chartreuse made by the Carthusian Fathers, I speak simply of the liqueur that you recognize, when you drink it, as being Chartreuse.

A. I—I esteem that I would not consider that product as being Chartreuse.

x-Q. 34. What would you consider it?

1279 A. But—well, the question is rather embarrassing evidently.

x-Q. 35. What would you call it?

A. Liqueurs like it, imitations of Chartreuse.

x-Q. 36. I suppose that you ask for Chartreuse in a café, and you are brought a glass of liqueur that you drink and that you think is Chartreuse. Afterwards you are told that it was not made by the Carthusian Fathers, would that not nevertheless be Chartreuse?

1280 A. That—I do not take it upon myself to solve the case.

x-Q. 37. What?

A. I do not take it upon myself to solve the case.

M. Rocques. The question that I should like to put is this one:

If we take two essences coming from the same plant, but of different years, as was the case with the essences of which we spoke a moment ago—the essence of clary sage—seeing that the analysis shows clearly that the composition of these essences differs, will they have the same index of iodine?

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A. It would have to be done, I have not had the opportunity.

M. Rocques. Evidently but in principle, giving that one essence contains 43, the other 25% of acetate, would they have the same index of iodine?

A. I repeat that this data does not figure, it would be interesting to study it, I cannot pre-judge.

M. Rocques. A chemist can pre-judge it, since he has the chemical composition?

A. I cannot indicate a figure, one cannot— 1282

M. Rocques. I simply ask if this index would be the same?

A. I do not know.

x-Q. 38. What do you think, Mr. Sanglé-Ferriére, do you think that it would be the same?

A. That I absolutely do not know, do not know at all.

M. Rocques. Then of what is the index of iodine a function?

A. For that I can only reply about data that we 1283 have established and not about others that I ignore.

M. Rocques. Is it not the function of the composition of an essence?

A. It is possible, but I cannot reply to that seeing that I only cite figures obtained by M. Cugniasse and me on essences that we studied.

M. Rocques. Is it not nevertheless a scientific data more than probable?

A. That is possible.

M. Rocques. Have two essences of mint having dif- 1284 ferent proportions of menthol, the same index of iodine?

A. That, I do not know if it has been made to appear. We did not proportion menthol, we confined ourselves to making indices of iodine, and we obtained, as it is written, as I repeated a moment ago, absolutely neighboring indices of iodine.

x-Q. 39. But since you say yourself, Mr. Sanglé-Ferriére, that "essences being natural compound products, their proportional capacity in constituent bodies

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is therefore variable, and can give different indices of iodine for a same sort of essence,"—would you not conclude that if in two essences of clary sage there is one that has 43 and the other 25 per cent, they will give different indices of iodine?

A. The phrase evidently exists, but we did not establish it by our figures and our analysis. Our figures are excessively near.

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SESSION OF MONDAY, May 28th, 1906, Continued.

CUGNIASSE, of No. 27, Rue Titon, Paris, aged forty years, chemist, having been produced, sworn and examined on the part of the Plaintiff, doth depose and say as follows:

1287 DIRECT INTERROGATORIES BY MR. J. BONNET, representing the Plaintiff:

Q. 1. What is your name, Sir?

A. Cugniasse.

Q. 2. What is your age?

A. 40 years.

Q. 3. What is your residence?

A. 27, Rue Titon, Paris.

Q. 4. Your profession?

A. Chemist at the Municipal Laboratory.

1288 Q. 5. Are you or are you not the author of a chemical method for analyzing essences?

A. Yes, Sir, in collaboration with Mr. Sanglé-Ferrière.

Q. 6. What is your opinion, Sir, in a general way, on the question of tasting alcohol and spirits?

A. On the matter of alcohols properly speaking, what one generally calls the alcohols, tasting may give some indications—The alcohols properly so called, the natural alcohols, the kirchs, spirits, cognacs, rum even; but as for liqueurs, from experiments which we have

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made we remarked that even at the hands of very experienced tasters tasting often gives absolutely false indications.

Q. 7. In a work which has for title "Practical Manuel of Analysis of Alcohols and Spirits," by Girard and Cugniasse, in a work in the composing of which you have taken part, I read page 7 what follows :

" Neither do liqueurs obtained by the aid of essences " deceive the taster, their exaggerated bouquet never " has the properties or the fineness of the natural 1290 " bouquet, coming from the maceration and distilla- " tion of aromatic plants. In spite of a distillation " effected on these products obtained by the addition " of essences, the incorporation never seems as per- " fect, the accentuated perfume is always fugitive ; " There is sometimes discovered there a taste of resin " like essence, very characteristic and very disagree- " able, which is never met with in the good old " liqueurs of mark which are well made."

Will you develop a little what you meant? 1291

A. It is an essentially practical book, made for the use of chemists who look above all for gross adulterations. We meant that when a chemist finds himself in the presence of these coarse liqueurs, such as Paris is full of, such as exist in all towns, tasting in that case gives very serious indications to differentiate the coarse products from the fine ones. But between two fine products I think that there are reservations to be made from the point of view of the indications that tasting can give, above all for liqueurs which contain 1292 sugar in large quantities and which are often of very careful fabrication.

Q. 8. At the Municipal Laboratory, do you give much credit to the results from tasting ?

A. Oh, I do not think so, Sir, I do not think so. For wines we often take indications at the advice of tasters, but for liqueurs—I know that the conclusions are never given exactly, but as far as I am concerned, we do not often take them into account.

Q. 9. In the preceding depositions, it was said that

1293 plants which served for the extraction of essences had first a capacity of essences which varied every year according to the climatic state. It was said besides that essences themselves varied according to their constitutent elements.

A. That is my opinion.

Q. 9A. And in a work which you have written, and which has for title: "New Method of Analysis of Absinthe", I read page 53 what follows:

1294 "Essences being natural compound bodies, their "proportional capacity in each constitutent body is "therefore variable and can give different indices of "iodine for one same sort of essence. It is thus that "essence of annis contains from 80 to 90% of anethol. "Essence of fennel from 50 to 80% of anethol with a "cetone, fenone, whose proportion is itself variable. "Essence of absinthe, we pointed it out, contains a "a tenacetone, tuyone, which dominates among these "constitutent bodies, and whose quantity is subject to
1295 "great variations."

On the other hand I have at hand the "Bulletin Industriel et Scientifique de Roux et Bertrand Fils, de Grasse", and in this work, page 37, two samples of essences are spoken of which gave rise to—it is a question of clary sage—the analyses gave rise to rather perceptible differences in their constitutent bodies; thus in one of the essences of 1904 we find in ethers, 43%, and in 1905, 25 per cent. Well, given these indications which I have just furnished you with, do you
1296 think that it is possible to obtain every year typical alcoholates in the fabrication of liqueurs—with a single essence—having always the same composition in essence in spite of these variations in the composition of the essential elements constituting essences?

A. Yes. There is in this question—This question is extremely complex. One must first take into account the quantity of essential oils existing in the plant, then the quantity, the state of the plant, because the state of desiccation of the plant. You speak to me of an essential oil in the plants?

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Q. 10. In a given plant.

A. But one day I shall have a given quantity of essential oils in comparison with the whole of the elements entering into the plant, the next day I shall have another proportion according to the state of desiccation of the plant. And one can correct precisely these capacities in making the proportion of principles, of plants entering into the alcohol, vary according precisely to the capacity—the state of desiccation of the plant. One must also take into account in 1298
the question that you put to me the state of desiccation of the plant.

Q. 11. You know, Sir, the establishment Schimmel?

A. Yes, Sir.

Q. 12. Does not that establishment, when it is asked for them supply essences of fixed composition?

A. Oh, absolutely, absolutely. It is even the basis of their commerce founded on analytical processes of which they are the inventors.

Q. 13. Will you develop for me a little what you 1299
know about this question?

A. Thus from the point of view of the essence of annis, the establishment Schimmel never sells essence of annis without giving its capacity in anidol. From the point of view of essence of—of all essences, of all essences it has established a chemical function and besides they are very proud of their analytical process and they base all their commerce on the existing principle—on the constituent principles of essences.

Q. 14. So that it would be possible, by addressing 1300
oneself to the Schimmel establishment, for instance, to obtain essences having constituent elements always in the same proportions?

A. I think so.

Q. 15. From your personal experience?

A. I have analysed many essences, and I have always, by Schimmel's process, proportioned the elements that he finds. It was for Paris merchants whom the question particularly interested, and who used to bring the

1301 essential oils to the Municipal Laboratory to know their capacity.

Q. 16. In your opinion can one conceive that in a model distillery there are processes which allow these variations in the constitution of the essences each year to be corrected ?

A. It is evident, it is evident, absolutely. It is my personal opinion.

Q. 17. And you think that there may be there inter-
1302 esting secrets of fabrication ?

A. Yes, something that we do not know well, but which nevertheless exists, which can perfectly well exist.

Q. 18. Then, according to you, it would be thanks to these secrets, to these secrets in the process, to these secrets of analysis that one would succeed in obtaining identical liqueurs ?

A. It is possible.

Q. 19. In any case, you do not consider it impos-
1303 sible ?

A. Oh, not at all.

Q. 20. Mr. Pillet cited, as an example, just as an example, to show the possibility of succeeding in obtaining essences always of the same composition, the following method : the constituent elements are isolated, then they are united in given proportions. Is that feasible ?

A. It is possible for menthol, for instance, then new processes exist. Thus the deterpened essences, these
1304 deterpened essences, have an object, it is to give them fixity in their constituent elements, to narrow down up to a certain point, the elementary composition of essences and of oils.

Q. 21. Then in your opinion, do you imagine that the Carthusian Fathers for instance, have processes which allow them—

M. KELLY : It is a leading question. I do not wish to stop you, but you do nothing but ask leading questions.

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Q. 22. According to you, do you think that the Carthusian Fathers can have processes which allow them to correct the modifications which essences undergo in their composition from year to year?

A. We are obliged to admit that it is very possible.

Q. 23. Are you of opinion that the Carthusian Fathers have a secret of fabrication for their liqueur?

A. I am not only of that opinion but I am convinced of it, seeing that all the imitations which have been made of Chartreuse seem to differ very much from it. 1306

M. BONNET: I thank you.

CROSS-EXAMINATION OF M. CUGNIASSE, BY M. KELLY.

x-Q. 1. Do you know the liqueur made at present by Mr. Cusenier at the Grande Chartreuse?

A. I have had samples of it in hand.

x-Q. 2. Did you taste them?

A. Yes, Sir. 1307

x-Q. 3. Do you not find that this liqueur resembles very much the Chartreuse that the Carthusians formerly made at the Grande Chartreuse?

A. I will tell you that from the point of view of taste, my personal opinion is of no value, is it, from a tasting point of view.

x-Q. 4. But still, if this liqueur were poured out for you in a café without your knowing where it came from, do you not think that you would easily drink it as being Chartreuse? 1308

A. According to the opinion of tasters, no.

x-Q. 5. But according to your own opinion?

A. According to my own opinion I compared Chartreuse by making the following experiment: I put imitations of Chartreuse and Chartreuse in recipients, and I tasted. It must also be said that it was necessary to exercise the palate, seeing that my personal experience is not developed enough to arrive at the result at the first trial. I tasted each of these glasses, and I asked a person to mix the glasses. I was per-

1309 fectly well able to find out in the different glasses the one in which there was Chartreuse.

x-Q. 6. Since when did you do that, on what date?

A. I do not know, some months ago.

x-Q. 7. You did not do that lately?

A. Some months ago.

x-Q. 8. You do not know?

A. It was not a question of the liqueur of M. Cusenier, but of any liqueur, of an imitation,—of an imita-
1310 tion.

x-Q. 9. It was not the liqueur of M. Cusenier?

A. It was an imitation, there are quantities of them. We receive of them—I could certainly name a dozen of them to you.

x-Q. 10. You never made these experiments with the liqueur of M. Cusenier?

A. I do not think so—I could not tell you—I could not affirm to this degree—

x-Q. 11. The Schimmel establishment, does it make
1311 essences of plants?

A. Certainly, essential oils are extracted from plants.

x-Q. 12. Is not the index of iodine a function of the chemical composition of an essence?

A. Yes, Sir.

x-Q. 13. And then if the chemical composition varies the index of iodine will vary?

A. Precisely, we arrive at the same result, I shall make you the same reply as I made you a moment ago. The index of iodine is a practical method for analysing,
1312 for gaugeing the essential oils in liqueurs. In liqueurs, we find ourselves in presence of a well determined quantity of essential oils, of a very feeble quantity of essential oils, there is a considerable variation in the liqueurs. The question is to find a practical process to estimate approximately, but sufficiently, the quantity of essences susceptible of entering, in a very feeble quantity, in the liqueur, and we found, after a work which has been generally accepted by all chemists, which has been awarded a prize by the Académie de Médicine, and reproduced in all not only French but also foreign

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newspapers—and from a practical point of view we were led to discuss, to conclude that our method of the index of iodine was absolutely sufficient to give constant figures on the quantity of essential oils existing in a liqueur.

x-Q. 14. I do not think that you have replied to my question. I asked you if the index of iodine was a function of the chemical composition of an essence?

A. Yes, Sir, I answered you yes.

x-Q. 15. This index of iodine will vary if the com- 1314
position varies?

A. Yes, but I reply to you precisely that the quantity of essential oils, consequently the quantity of principles constituting these essential oils being very slight in the liqueurs, our process with the index of iodine will give us figures near enough, exact enough, for the differences which are perceptible enough when it is a pure essence, to be notably diminished in the liqueur.

M. Rocques: The pure essences are in ques- 1315
tion.

M. Cugniasse: Then there is no question of index of iodine.

M. Rocques: It is the index of iodine of essence.

M. Cugniasse: We never made index of iodine of essence but of essence considered in its alcoholic solution. We have no interest in proportioning essence when it is pure, when we have pure essential oil, for instance essential oil 1316
of angelica is brought to us, there are 10 grammes; there are 10 grammes, that suffices. What we want to know is, when a fraction of this essential oil has been put in alcohol, by what process we can get to know this quantity? It is there that the index of iodine has its use, the index of iodine applied to a pure essence is of no interest, the essential oil can be weighed.

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x-Q. 16. But if an element of the essence varies up to 50 per cent, will that not necessarily produce a variation in the index of iodine ?

A. Yes, but practically, you know, I do not think that there are many essences which vary 50 per cent in capacity.

x-Q. 17. We produced one which had a variation from year to year of 50 per cent.

A. In capacity ?

1318 x-Q. 18. It is essence of clary sage. Do you know the "Bulletin Scientifique et Industriel—" ?

A. Yes, Sir, very well.

x-Q. 19. There is there : clary sage, two samples of this essence distilled, and coming rigorously from the same region, situated in the neighbourhood of Grasse, give in 1904 acetate of linalyle at 43 per cent, and at 25 per cent in 1905.

1319 M. Rocques : Everybody has confessed that the method of the index of iodine was interesting. The only point that we wanted to have specified, is that the index of iodine coming from an essence of plants grown in the same country, but of different years, can vary.

M. Cugniasse : In such a slight manner that when speaking of a very weak alcoholate, above all as weak as in Chartreuse, which contains 0.1 of essential oils, the figures are absolutely—

1320 M. Rocques : The point to which I had called the attention of Mr. Kelly is the following : You said that one can make at will, by employing pure products, essences having a well known capacity. But have the products that are made from essences the same value from a tasting point of view, as the products which are made directly from plants ?

M. Cugniasse : One can succeed in modifying, precisely by the method of the index of iodine, in modifying an alcoholate in its capacity of active principles, by making the quantity of

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plants vary, so that one can succeed in making identical alcoholates, in spite of the variation of capacity of essential oils and of capacity in active principles of these essential oils. You can conceive that, Mr. Rocques?

M. ROCQUES : It is very complicated.

M. CUGNIASSE : You can admit that?

M. ROCQUES : I do not know—the modification made for pure essences like menthol—

M. CUGNIASSE : Perhaps from a practical point 1322
of view there is a question which I do not discuss, because from a practical point of view I have never tried, but one sees such curious things from an industrial point of view, and industrials may arrive at this result.

M. ROCQUES : Nevertheless in your book, you said that from a point of view of tasting, the products made with essences—

M. CUGNIASSE : I repeat to you, this book has
a special object ; it is the case of a book 1323
destined to chemists—to chemists of municipal laboratories in general, who find themselves in the presence of very different products and for which tasting may be useful.

M. ROCQUES : If chemists of little experience recognize that, experienced tasters should easily recognize it.

M. CUGNIASSE : When there is a question of coarse things, of gross imitations, it is evident.

M. ROCQUES : In this case the question was 1324
solutions of anedol or menthol.

M. CUGNIASSE : That I do not know.

M. ROCQUES : It is what we were saying a moment ago.

M. CUGNIASSE : You cannot, Mr. Rocques, at present, neither you nor I, discuss that question without knowing if by adding a certain quantity of ethers to an alcoholate, this alcoholate will not give the same taste as if this ether had not been added. An example

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which we again know are the admirably imitated alcohols with ejentic ether. We have had alcohols which were very well imitated with an addition of ejentic ether. At present, in accordance with the new English regulations, cognacs are made to which the given dose required by the English government is added. In the House of Commons there is a new regulation, you know: Nothing else can any
1326 longer enter England but cognacs containing a quantity of ether that you know, this quantity of ether is added, and the cognacs are consumed.

M. Rocques: When liqueurs are in question, I think that what you said in your book is quite exact. Liqueurs made with artificial essences or even extracted from plants are far from having the same value, from a tasting point of view, as liqueurs made with plants. I think that to be absolutely exact.

1327 M. Cugniasse: Yes, nevertheless now one succeeds in having processes—the process Cobbe, the process of "tranchage" which you know. One succeeds in making imitations which are embarrassing.

M. Rocques: The taster recognizes it.

M. Cugniasse: Oh, no, that, we do not agree about that point of view.

M. Bonnet: I did not want to interrupt—

M. Kelly: We have finished.

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SESSION OF THURSDAY, May 31st, 1906, at 2 P. M.

Present—

MR. AUGUSTUS E. INGRAM, Vice Consul-General of the United States of America at Paris, France, Commissioner.

MR. BARBANCEY, Secretary of MR. J. BONNET, Counsel for the Plaintiff, assisted by MR. BACHRICH, private stenographer.

1330 MR. EDMOND KELLY, Counsel for the Defendant, assisted by MISS GILLET, private stenographer.

G. DUCLOS, official sworn French stenographer.

JULIEN CHELLÉ, of Paris, France, aged fifty-one years, restaurant-keeper, having been produced, sworn and examined on the part of the Plaintiff, doth depose and say as follows:

1331 DIRECT INTERROGATORIES BY MR. BARBANCEY (secretary of Mr. J. Bonnet), representing the Plaintiff:

Q. 1. What is your name, Sir?

A. Chellé, Julien.

Q. 2. Your Christian names?

A. Julien.

Q. 3. What is your age?

A. 51 years.

Q. 4. Your profession?

1332 A. Restaurant keeper.

Q. 5. What is the importance of your establishment?

A. From what point of view?

Q. 6. From the point of view of customers?

A. Goodness, I am considered as being a first class establishment.

Q. 7. What sort of customers have you?

A. Very cosmopolitan, rich customers—well rich customers.

Q. 8. Do you know the Chartreuse that the Car-

1333 thusian Fathers made at the Grande Chartreuse before their departure from France?

A. Very well.

Q. 9. Do you know the Chartreuse, the liqueur that the Carthusian Fathers make at present at Tarragona?

A. Very well.

Q. 10. Do you know the liqueur that the liquidator of the congregation of the Carthusian Fathers is having made at present at Fourvoirie by Mr. Cusenier?

1334 A. Yes.

Q. 11. Are you a taster by profession?

A. Oh, no, Sir.

Q. 12. Could you give us a personal opinion about these three Chartreuses?

M. KELLY: Objection, the witness not being qualified as a taster.

A. I am not a taster by profession, Sir, but still I
1335 can give an opinion about the Chartreuses, the opinion which I intend to give—

M. KELLY: I wish to explain to the witness that we are obliged, by the formalities of the American law, to note certain technical objections, and that my objections are not addressed to the witness, they are simply recorded in the commission.

M. BARBANCEY: In reply I call attention to
1336 the fact that I took care to ask the witness if he was a taster by profession, and that the witness having replied "no" to me I asked him his personal opinion, as I may ask anybody's.

Q. 13. Consequently it is not your personal opinion that you will make known to me. What opinion can you make known to me?

A. That of the public who frequent my establishment.

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Q. 14. What is the opinion of your customers on this subject ?

M. KELLY : Objection : hearsay.

M. BARBANCEY : I maintain my question : what is the opinion of your customers on this subject ?

A. From the point of view of the different kinds of liqueur, Sir ? 1338

Q. 15. Yes, of these three liqueurs.

A. Yes. The old liqueur was evidently the one that was the most asked for when the other liqueur was already known, but now I must point out that on account of the objection of my customers I no longer serve this old liqueur. It is considered as being about the same quality as that made at present by the Carthusian Fathers, but they made objections such that I was obliged for my personal satisfaction, and in view of the objection of the public, who thought that we 1339 wanted to deceive them on account of the similarity of the bottles.—I no longer serve it.

Q. 16. I do not think that your answer is quite precise. If I am not mistaken, you said that for the public the old liqueur of the Carthusian Fathers, the old Chartreuse was about—was the same—about the same as that of the Carthusian Fathers, but that at the objection of the public you no longer served the old Chartreuse, because the public was afraid that it was being deceived, seeing that the bottles were iden- 1340 tical—

A. Like those of the liquidator, they are afraid that they are being deceived, that in the old bottles of the Carthusians the liqueur of the liquidator is served to them, because they do not make a difference, the label and the bottle are alike, and when old Chartreuse is given, as I had a stock of 1877, of 1873 and of liqueur made in the last years, the bottles are quite like those of the liquidator, except perhaps on the label, a thing which you must be well posted up to know. The label

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has a very small difference, but the public who do not know, when they ask for old Chartreuse, for the old one of the Fathers, and taste it, they say: Oh no, I would rather you gave me the new liqueur of the Carthusian Fathers than the old one, I am afraid of your giving me the liqueur of the liquidator instead of the old one.—I think that I am explaining myself well.

Q. 17. Your complemental answer enlightens the
1342 first part.

A. The public is afraid that liqueur of the liquidator is served to them in bottles of the old Chartreuse.

Q. 18. You spoke of a slight difference which existed between the label of the old liqueur of the Carthusian Fathers and the present label of the liquidator?

A. Yes.

Q. 19. What does this slight difference consist of?

A. Oh, the difference is in the name of the printer.

Q. 20. Is it in big letters?

1343 A. Oh, it is hardly visible, you must even be well posted up to know it.

Q. 21. You have been in this sort of business a long time?

A. Yes, Sir.

Q. 22. In your opinion does the public notice the little impercepible indications, even though they know—

A. I think that they cannot notice, seeing that I would have great difficulty in seeing it myself—If I
1344 wanted—if two bottles were placed for me one beside the other—But the public, I doubt very much that they can see it.

Q. 23. Is it their habit to examine the labels attentively?

A. No.

Q. 24. Do they not look at the whole?

A. The shape of the bottle, the label, generally.

Q. 25. Generally, is it their habit to take a magnifying glass?

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A. They look at the shape of the bottles, the most visible exterior signs, that is all.

Q. 26. In your opinion could somebody who has not been warned be deceived about the merchandise which is served to him? I suppose somebody asking for the old liqueur of the Carthusian Fathers, and having to deal with a merchant who has a very imperfect notion of his duties, and who pours out liqueur of the liquidator for him; is it easy for the public who consume to be 1346 deceived?

A. Oh, very.

Q. 27. It is very easy?

A. Very easy.

Q. 28. Do you think that the public know well in what consists the slight difference which exists between the label of the liquidator and the old label of the Carthusian Fathers?

A. I think they are completely ignorant of it.

Q. 29. Have you given instructions to your staff 1347 about this liqueur?

A. Oh, yes, very severe ones.

Q. 30. Will you let me know these instructions?

A. When Chartreuse is asked for, for instance,—it is the word that is generally used in our establishments —the staff should ask: do you want Chartreuse of the liquidator, do you want liqueur of the Carthusian Fathers. They do not say "Chartreuse," and I will tell you why: we should be wrong if Chartreuse were asked for and we served that of the Carthusian 1348 Fathers. But as it is at my place, the staff should ask: "do you want liqueur of the Carthusian Fathers" or "chartreuse of the liquidator."

Q. 31. To this question of your staff, what do the public reply?

A. Oh Sir, out of—Ninety-eight per cent. ask for the liqueur of the Carthusian Fathers.

Q. 32. Have you heard appreciations, have you personally heard appreciations of your customers about the two liqueurs?

1349

M. KELLY: I wish to have the same objection to all these questions noted.

M. BARBANCEY: But—

M. KELLY: It is my duty to note them in the commission.

M. BARBANCEY: But, you will excuse me, personally I should be obliged to you to state your objection at each question.

M. KELLY: It is in order not to interrupt
1350 you, I am not obliged to do so, for when I state an objection, it applies to the whole line of questions of the same order. I simply say that I have two objections to all the questions that you pose: one to your questions which are addressed and can only in our jurisprudence be addressed to an expert,—secondly to all the questions which have for an object to elucidate hearsay.

M. BARBANCEY: Nevertheless I maintain my
1351 question, and I ask the witness if personally, in his establishment, he has heard appreciations about these two liqueurs from customers whom he knows, and whom it is in his interest to satisfy?

A. The appreciations, I have just, I think, given them to you, it is that the customer prefers—I tell you in what proportion: 98 per cent.—the liqueur of the Carthusian Fathers to the liqueur of the liquidator. It
1352 is the demand, therefore it is the preference.

CROSS-EXAMINATION BY M. KELLY:

x-Q. 1. You have been in business for a long time, have you not, Sir?

A. Yes.

x-Q. 2. Since a great number of years?

A. I have been a restaurant keeper for 23 years, and I am in the trade—that is to say that I was, before having my own business, manager opposite, in the

1353

Café de Paris, in the Café de la Paix—I have been about 36 years in contact with the public.

x-Q. 3. Then you have known Chartreuse for a long time ?

A. Yes, Sir.

x-Q. 4. Before the eviction of the Carthusians, to what was the aroma of the Chartreuse attributed ?

M. Barbancey : Objection, the witness not being qualified as an expert chemist. 1354

A. Oh, that I cannot tell you at all, I know nothing about it.

x-Q. 5. Have you never heard to what that was attributed, the aroma ?

M. Barbancey : Objection : by hearsay.

A. No, Sir, never.

1355

M. Kelly : I should call my adversary's attention to the fact that he ought to know that in the cross examination the rules are quite different, and the objections which I had a right to make to his questions do not apply—

M. Barbancey : I maintain my objection.

M. Kelly (to the stenographer) : Repeat the question.

The Witness : I understood it, Sir, I have never heard that spoken of. 1356

x-Q. 6. You never heard it said that the Chartreuse owed its value to the plants gathered at the Chartreuse ?

A. No.

x-Q. 7. Never ?

A. Never.

x-Q. 8. Your restaurant is known, is it not, under the name of Restaurant Julien ?

A. Yes, Sir.

1357

x-Q. 9. 3, Boulevard de Capucines ?

A. Yes, Sir.

x-Q. 10. And, then, of " Moulin Rouge " ?

A. Yes.

x-Q. 11. This is the menu of your house ?

A. Yes, Sir, exactly so.

M. KELLY : I produce this menu. (Exhibit No. 16).

1358

x-Q. 12. You serve luncheons and dinners at fixed price, do you not ?

A. Sometimes.

x-Q. 13. What are the prices ?

A. Six francs a dinner without wine, and four francs a lunch without the wine. Besides, for the bill of fare, you see, all the prices are put on it, you can judge of them. I could name for you American customers if you like, who come to my place, and to whom I even

1359 sometimes send wines and other eatables.

x-Q. 14. You said that customers made objections, certain objections, about the question of Chartreuse : can you let me know how many such objections have been made to you ?

A. About what ? About the old Chartreuse and the new ? Those have often been made to me.

x-Q. 15. About how many times ?

A. Oh, five to six times. That sufficed for me to take away my stock that I have of Chartreuse. It is

1360 in my private cellar, if I can put it thus, I serve no more of it. It is disagreeable to hear a gentleman say : you are trying to deceive me by giving the liqueur of the liquidator for old Chartreuse, it is disagreeable for a shop-keeper, I look as though I were deceiving the public. I put my stock of Chartreuse in my personal cellar, I serve no more of it, I offer some to my friends, if people want to drink, I serve no more of it to the public, just on account of that.

1361

SESSION OF THURSDAY, May 31st, 1906, Continued.

EUGÉNE CORNUCHET, of Paris, France, aged 39 years, restaurant keeper, having been produced, sworn and examined on the part of the Plaintiff, doth depose and say as follows :

DIRECT INTERROGATORIES by MR. BARBANCEY, Secretary of Mr. J. Bonnet, representing the Plaintiff : 1362

Q. 1. What is your name ?

A. Eugène Cornuchet.

Q. 2. Your christian names ?

A. Eugène Léon.

Q. 3. Your age ?

A. 39 years.

Q. 4. Your profession ?

A. Restaurant keeper.

Q. 5. What are the establishments you possess ? 1363

A. Maxim's, the Ambassadeurs and the Alcazar d'Eté.

Q. 6. What is the importance of these establishments ?

A. From what point of view ?

Q. 7. The customers.

A. They do 4 million francs of business each year.

Q. 8. From the clientel point of view, of customers.

A. We have a somewhat varied connection. The Ambassadeurs represents the select restaurant, the 1364 Alcazar d'Eté the popular restaurant, of a moderate price, and Maxim's is a restaurant of another order, a foreign, cosmopolitan, wealthy connection.

Q. 9. It is not only restaurants that you have at the Ambassadeurs and at the Alcazar d'Eté ?

A. No, we have a lemonade part, a concert part, drinks are taken there.

Q. 10. Do you know the Chartreuse that the Carthusian Fathers made formerly at the Monastery of the Grande Chartreuse, before their departure from France ?

1365

A. Yes, we know it. It was formerly the only liqueur that we had, well, the old Chartreuse. We have still a pretty considerable stock of it, which we are still selling now.

Q. 11. Do you know the Chartreuse or the liqueur that the Carthusian Fathers make at present at Tarragona?

A. Yes, it is the liqueur that we now serve, in concurrence with the old Chartreuse, the old stock that
1366 we possess.

Q. 12. Do you know the liqueur that the liquidator of the Order of the Carthusian Fathers has made at present, at Fourvoirie, by Mr. Cusenier?

A. I know his liqueur, I, at the solicitation of one of my friends who, I think, has to do with this liqueur, Mr. Jacquart, I took some formerly and I ceased to give it, because I was afraid of trouble and because I had difficulties with my customers.

Q. 13. Presently we shall come to the first part of
1367 your answer. Are you a taster by profession?

A. No, it is not my trade, I am a dealer, and a dealer only.

Q. 14. Which is the one of the three liqueurs I have just named that your customers prefer?

M. Kelly: Objection; hearsay.

M. Barbancey: It is scarcely hearsay, seeing that I ask the master of an establishment which of three liqueurs the clients prefer. He has his
1368 books.

M. Kelly: I am not here to argue these points of law. You persist in not understanding what these objections mean. It is my duty, I cannot later on raise an objection if I have not had it inserted in the commission. Today it is my duty to insert objection, and to indicate it there; there is no need to argue, it is not our business to argue, the argument will take place later on.

M. Barbancey: Not being very well acquainted

1369

with American practice, I think I ought to indicate the reasons which in my personal opinion destroy the objection. The American tribunals will or will not take them into consideration, but I indicate them.

Q. 14A. Which is the one of the three liqueurs which, from what you know, from your books, from your commercial books, the reports which are made to you by your waiters, which after all are emanations 1370 from you, the public prefers?

M. KELLY: Objection; hearsay.

A. Evidently my customers prefer the old Chartreuse, but considering the high price at which I sell it, they now ask for, and it is an understood thing, the Chartreuse of Tarragona, the liqueur of the Carthusian Fathers of Tarragona. That is the liqueur I am asked for. 1371

Q. 15. Have you given instructions to your staff about these three liqueurs?

A. About these three liqueurs, here are the instructions which have been given to the staff: When a customer asks for a glass of Chartreuse he is served with the old Chartreuse, which is sometimes refused, considering the high price, and the customer then nearly always asks for the liqueur of Tarragona which is of a more accessible price.

1372

M. KELLY: Objection, as having nothing to do with the case.

Q. 16. Does the customer, do the customers ask or not ask you often for the liqueur of the liquidator?

A. That has never been precisely stated, Sir.

Q. 17. You said a moment ago that at a certain moment you had kept the liqueur of the liquidator and that you had ceased doing so?

1373

A. Because, Sir, I was afraid and with—from certain observations, that my customers would suspect me of mixing the new liqueur, with a view to gaining more money, of mixing the liqueur of the liquidator with the old Chartreuse, given the similarity of labels, of seals, the sort of bottles, of labels, then we abolished this liqueur, which generally we were not asked for.

Q. 18. Then you think that your customers could be
1374 deceived by the similarity of the bottles and the absolute or almost absolute similarity in the labels for the old liqueur of the Carthusian Fathers with those of the liqueur of the liquidator ?

M. Kelly : Objection ; a leading question.

A. Evidently, it is the same thing.

Q. 19. Is there a difference between the old bottles of the Carthusian Fathers and the labels of the old
1375 liqueur of the Carthusian Fathers and the bottles and the labels which the liquidator uses at present ?

A. There is a difference little visible to those who are not initiated ; this little question of the printer's mark. One must be a professional of our trade to judge that, without which the exterior aspect is completely alike.

Q. 20. The public could make a mistake ?

A. Evidently, the uninitiated public does not seize this little detail.

1376 Q. 21. Could even the public a little bit initiated easily see this difference ?

A. Ah, yes.

Q. 22. Are the letters big ?

A. The letters are quite small.

Q. 23. Is it placed in a very visible part of the label ?

A. It is placed, if I remember well, in the lower part and at the left of the label, it is in quite small letters.

1377

Q. 24. Can it be seen from a distance, say of a metre ?

A. That is uncertain, is it not, I do not think—Well, it is a little—I do not know, I do not see very well, I have not that before my eyes.

Q. 25. In your establishments, is it the habit to leave the bottles of liqueur on the table, or is it the waiter who serves the liqueur straight into little glasses ?

A. We have two manners of operating according to 1378
the style of establishment. In the stylish establishments, Maxim's and the Ambassadeurs, we leave the bottles on the table, in the establishments like the Alcazar, the waiter comes, pours out the liqueur, and goes away with the bottle.

Q. 26. In this latter establishment, can the public easily distinguish the slight difference which exists between the two labels ?

A. That is impossible for them, if they do not ask to take the bottle and to see it themselves seeing that the 1379
waiter pours out and goes away, does he not,—it is finished.

Q. 27. You have made known to me the opinion of your customers, I should be very much obliged to you to let me know your personal opinion.

Mr. Kelly : Objection ; the witness is not qualified as a taster.

A. From what point of view ? 1380

Q. 28. In your personal opinion, which is the liqueur, that made at present at Tarragona by the Carthusian Fathers or that which at present Mr. Cusenier makes on the part of the liquidator, that most resembles the old liqueur of the Carthusian Fathers ?

A. Well, you know—Wait, I must reflect a little—I think—I think I am sure that if there is a liqueur that resembles the other, it is the liqueur of Tarragona that resembles the old Chartreuse, whilst taking into account the difference of age.

1381

CROSS-EXAMINATION BY M. KELLY:

x-Q. 1. You said, Sir, that you feared trouble selling the liqueur made by the liquidator?

A. Yes, Sir.

x-Q. 2. What trouble did you fear?

A. Well, agents of the Chartreuse, do you see, of the liqueur of the liquidator, representatives caused the rumor to be circulated at a certain moment—I
1382 speak of the time when that commenced—that if we were caught giving the liqueur of Tarragona for Chartreuse, which is fair enough, since we would be deceiving people, we would be prosecuted, trouble of this sort would be made for us.

x-Q. 3. Who would make this trouble?

A. The liquidator himself, he or his agents.

x-Q. 4. What trouble could he get you into?

A. In having it officially proved that we sell as Chartreuse either the old Chartreuse or the Tar-
1383 ragona. In order not to have trouble I abolished the Chartreuse completely—I call Chartreuse the one of the liquidator—and I say to my customers: There is none, here is the old Chartreuse, which I sell very dear, which is really Chartreuse, and a new product: the liqueur of Tarragona, choose. This old liqueur will cost you—let us say two francs a glass—and the new product—let us say one franc a glass; these are naturally imaginary figures.

x-Q. 5. But how, by abolishing the sale of the
1384 liqueur of the liquidator, could you avoid the trouble with which you think yourself threatened?

A. Well, Sir, it is very simple. If you come to my house, you ask me for a glass of Chartreuse. If I have to deal with a silly waiter—I suppose you to be the representative of the Chartreuse accompanied by a bailiff ("Huissier")—a stupid waiter, or one who has understood the order badly, serves you a glass of liqueur of Tarragona. You will have been deceived, since it belongs—the Chartreuse belongs to the liquidator, and if I serve you a glass of liqueur of Tarra-

1385

gona for Chartreuse you will have been deceived. To avoid you being deceived, I say : I have no Chartreuse ; you ask me for Chartreuse, I say : I have none. Like that it is very simple.

x-Q. 6. The café " Maxim's " is a pretty celebrated café, is it not ?

A. Yes, Sir.

x-Q. 7. It is from that café that the play : " La Dame de chez Maxim's," sprang, is it not ?

A. Yes, Sir. 1386

x-Q. 8. Is it not the habit, in restaurants like Maxim's, to offer liquers to the customers ?

A. How, to offer liqueurs ?

x-Q. 9. To offer liqueurs to the customers ?

A. Oh, no, Sir, liqueurs are asked for, we bring them.

x-Q. 10. You bring them. What liqueurs do you bring ?

A. The liqueur that they ask for ; Kummel, Bénédictine—

x-Q. 11. After dinner, do you not serve liqueurs ? 1387

A. Fine champagne.

x-Q. 12. Only ?

A. Only.

x-Q. 13. Never other liqueurs ?

A. Unless by special request, or sometimes liqueurs that we have—it is a special business—that we are interested in pushing, such as Bols, that we have contracts. But as we have nothing similar with Chartreuse, neither the old nor the new, as the Carthusians have never advertised, nor the liquidator either, we 1388 have no interest in pushing it, and we push outside liqueurs : Bols, Cusenier, with whom we have just made a contract for advertising. Chartreuse, we only give when we are especially asked for it.

RE-DIRECT EXAMINATION BY M. BARBANCEY :

Re-d. Q. 1. You said, when I examined you, that the public did not ask for the liqueur of the liquidator. When Mr. Kelly examined you, you said that when the

1389

public asked for Chartreuse,—you thus called the liqueur of the liquidator,—you had none. It would seem that there is contradiction. Are you asked for or are you not asked for the liqueur of the liquidator?

A. I have never been asked for the liqueur of the liquidator. Is it because the public is warned? I do not know, but I have never been asked for the liqueur of the liquidator, never.

Re-d. Q. 2. Do you think that the public knows that
1390 the liqueur known under the name of Chartreuse is at present made by Mr. Cusenier, agent of the liquidator?

M. KELLY: Objection.

A. I do not think that the public realizes that.

Re-d. Q. 3. You said: for the moment the Chartreuse belongs to the liquidator. In virtue of what does this mark belong to the liquidator?

1391

M. KELLY: Objection, as not being re-direct.

A That, that is not my business.

Re-d. Q. 4. You say to your customers: I have no Chartreuse, and yet you serve them the old liqueur of the Carthusian Fathers, made at the Chartreuse, is it not Chartreuse?

A. If we say to the customers: I have no Chartreuse, by that is understood the liqueur made by the liqui-
1392 dator, immediately afterwards we say: we have the old Chartreuse 1889—since it has been sold to us as such—and we have the liqueur of Tarragona.

Re-d. Q. 5. Consequently, it was a wrong expression that you employed a moment ago when you said that you replied that you had no Chartreuse?

M. KELLY: A leading question.

A. It is understood that it is the new product, the present product.

1393

Re-d. Q. 6. When you are asked for Chartreuse—

A. I have none.

Re-d. Q. 7. When you are asked for Chartreuse, do you serve Chartreuse ?

A. I serve the old Chartreuse 1889, made formerly, that is what I serve.

Re-d. Q. 8. And this old Chartreuse, is it Chartreuse ?

A. Yes, evidently.

1394

(The session is closed at 3 o'clock. The commission adjourns until Thursday, June 7th, 1906, to be taken before the American Consul at Grenoble)..

First Session, Thursday, June 7, 1906.

The Session was opened at 10 o'clock in the morning, at the Consulate of the United States, at Grenoble.

Were present: 1395

Mr. C. P. H. Nason, Consul of the United States.

Mr. Bonnet, Counsel for the Plaintiff, assisted by Mr. Barbancey, Secretary; Mr. Boiton, Expert; and Mr. Bachrich, Stenographer.

Mr. Guignier, Attorney at Grenoble, representing Mr. Edmond Kelly, Counsel for the Defendant, assisted by Mr. Pellerin, Secretary to Mr. Kelly. 1396

Interrogatory of Mr. Jean Claude Rey, by Mr. Bonnet:

Q. 1. Will you give me your name ?

A. Rey.

Q. 2. Your christian names ?

A. Jean Claude.

Mr. Guignier. Does Mr. Boiton assist at this Interrogatory as Counsel for Mr. Bonnet?

1397

MR. BONNET. As Counsel.

MR. GUIGNIER. For he has been indicated to me as a witness?

MR. BONNET. He will assist as a witness this afternoon.

MR. GUIGNIER. I put the question to know whether Mr. Boiton can assist—it is a question of form—at this Interrogatory as Counsel when he is to appear as a witness?

1398 MR. BONNET. Mr. Pellerin will answer you that we have precedents, and that these precedents come precisely from Mr. Lecouturier.

MR. GUIGNIER. Nevertheless, there is something abnormal here. The witnesses should depose separately, Mr. Boiton is present. It seems to me that this is an irregularity of form from the knowledge I possess in the matter of inquiries in France, in that Mr. Boiton should assist at this inquiry when he is a witness?

1399 MR. BONNET. I made the same observation at the very beginning of the inquiries on many occasions, and Mr. Kelly informed me that it was perfectly regular that a person who was ulteriorly to be a witness should assist at the Interrogatories.

MR. PELLERIN. Mr. Guignier requests simply that the fact be noted.

MR. BONNET. I will cite for example witnesses of Mr. Lecouturier who have assisted at the
1400 Interrogatories. Mr. Lecouturier himself, Mr. Rocques and Mr. Dondey.

MR. GUIGNIER. These are things I do not know of. In point of view of French formality such would not be allowed, but if the American procedure permits it, I have nothing to say.

Q. 3. Your age?

A. 45 years.

Q. 4. Your residence?

A. Saint Pierre d' Entremont, Savoy.

1401

Q. 5. What is your profession ?

A. A cultivator.

Q. 6. Have you ever done anything else than cultivate the soil ?

A. Yes, Sir, when flowering time arrives we gather flowers to aid our household expenses ; to make a little profit.

Q. 7. Have you gathered plants ?

A. Yes, Sir.

Q. 8. For whose account ? 1402

A. Also for account of the Pères Chartreux.

Q. 9. Since how long ?

A. Oh, for more than thirty years, Sir, I have gathered them.

Q. 10. To whom did you deliver the plants you gathered ?

A. Direct to the house, to the house of the Chartreux, at Fourvorie.

Q. 11. Where did you gather these plants ?

A. Principally on our properties, Sir, then on the 1403 properties that surround our mountain which are neighbouring, like that of Mr. Camand, which is on one side, Mr. Marcieux on the other, and then again on the mountains which belong to parishes, where we go also.

Q. 12. You have gathered then plants on your own place ?

A. Yes, on our own properties.

Q. 13. And on your neighbours ?

A. Yes, also. 1404

Q. 14. Among the plants which you gather, is there to be found one which is called la Vénérelle (Vulnerary) ?

A. Yes, Sir.

Q. 15. Have you gathered this plant on your property ?

A. Yes, Sir.

Q. 16. Do important quantities of it grow on your property ?

A. A very large quantity, Sir.

1405

Q. 17. Do you know well la Vénérelle?

A. Just think—we gather it every year, I know it perfectly.

Q. 18. Can you tell me if this is la Vénérelle?

A. Yes, Sir, naturally.

(Mr. Guignier examines the box containing the plant presented to the witness, which is marked Exhibit No. 1).

1406 Mr. Guignier: Will you permit me an observation? I did not know—if this is another American rule I have nothing to say—that it was the Attorney making the inquiry who put questions. I thought—I do not know American rules—I thought it was the Judge, in the present case the Hon. Consul.

Q. 19. I continue. Here is a plant; Do you recognize it?

1407 A. Perfectly, at this moment there are already new ones, which have grown this year.

Q. 20. What is this plant?

A. It is la Vénérelle itself, but not yet at maturity, not flowered.

(The box presented to the witness is marked Exhibit No. 2.)

The Witness: It is the same plant as that one, but that one is fresh, and the other dry. There are two qualities, there are fresh and dry.

1408

Q. 21. Is the fresh one arrived at maturity?

A. Not yet, in the mountain where there is still snow, it will be gathered this year.

Q. 22. Is it easy to gather la Vénérelle?

A. Not very easy, Sir.

Q. 23. What do you mean when you say that it is not very easy?

A. I mean that to go and gather this plant there is great danger, great danger of falling. I have a neighbour, twelve years ago, who fell into a precipice, he

1409

was killed instantly. I myself helped to seek for him, to bring him back to the village.

Q. 24. What was the name of this neighbour ?

A. Hughes Rey.

Q. 25. How do you know that it was in gathering la Vénérelle that he was killed ?

A. I know it because also his sack was found, and in it there was still some of the yellow which he had gathered ; some Vénérelle flowers : in carrying him back to his house, the sack was taken along with him. 1410

Q. 26. To whom does the ground belong where the accident took place ?

A. To ourselves, the proprietors, Sir. It was on our own property that the accident occurred.

Q. 27. Do you know what the Chartreux did with the Vénérelle which they bought ?

A. As to that, no, as to that—

Q. 28. Did they buy from you other plants ?

A. Yes, Sir.

Q. 29. Do you know what they did with these other 1411 plants ?

A. Not at all.

Q. 30. Did you gather many kinds of plants ?

A. Yes, about ten qualities.

Q. 31. Did you gather plants in places belonging to parishes ?

A. Yes, Sir.

Q. 32. Has any one ever prevented you from so doing ?

A. No, we went there when we wished, no one has 1412 ever forbidden us to go there.

Q. 33. Do you know the Forest Keepers ?

A. Yes, in our country, the Keepers who watch in our country.

Q. 34. Have they told you that the gathering of the plants was forbidden ?

A. No, never.

Q. 35. Where did you gather the most Vénérelle ; on your properties, on your neighbour's properties, or on parish grounds ?

1413

A. We gathered most of it on our own properties, it is there that it grows to most advantage, in more considerable quantities.

Q. 36. Is it true that la Vénérelle cannot be gathered ripe, at maturity, with you, because the sheep eat it as fast as it grows ?

A. How can that be ? Sheep, in places where la Vénérelle grows the most, sheep cannot even approach them, impossible.

1414 Q. 37. Why so ?

A. Because such places are nearly all in precipices sheep cannot descend or mount to them, it grows among rocks where sheep cannot penetrate into, cannot go.

Q. 38. Does the Chamois like la Vénérelle ?

A. Oh, as for that, certainly.

Q. 39. Are there any Chamois on the estates of private persons ?

A. No, no one has ever seen any in that part of the 1415 mountain belonging to us.

Q. 40. Where are Chamois to be found more particularly ?

A. Round about the Grand Som, the Grande Vache.

Q. 41. Are these on the property of the State or of private individuals ?

A. Well, as to that— I do not know very well these mountains, probably on the property of the State, those parts, I am unable to inform you very precisely.

1416

Cross-examination by Mr. Guignier :

Mr. Bonnet : I would say, Mr. Guignier, that if such may facilitate you, I see no objection to Mr. Pellerin putting the questions.

Mr. Guignier : I should prefer that he do so, if he is better informed than I am, for I am not well posted at all.

x-Q. 1. Does la Vénérelle grow on the properties of private individuals or on that of parishes, and among the rocks or in the plains ?

1417

A. Among the rocks principally.

x-Q. 2. Does it grow on private properties as well as those of parishes—You have already replied?

A. Yes, it is always in the mountains.

x-Q. 3. At about what altitude?

A. We are not posted as to altitudes.

x-Q. 4. How many metres above sea level; at about what height?

A. As high as—

1418

x-Q. 5. You told us just now that you gathered this Vénérelle on your property. Your property, what is about its surface, how many hectares?

A. There must be about?--

x-Q. 6. Its size, its surface? what is its surface approximately, how many hectares?

A. There are 1200 "journals."

x-Q. 7. And of these 1200 "journals," are there parts in plains and parts in rocks?

A. Yes, meadow parts.

1419

x-Q. 8. Is the greater part in meadows?

A. No.

x-Q. 9. The greater part is in rocks?

A. Yes, more than three-fourths.

x-Q. 10. Your property is not in the plain, is it, it is in the heights of the Chartreuse?

A. Yes.

x-Q. 11. You said just now that you have never known of any prohibition against the tearing up of the plants—the gathering of the plants?

1420

A. No.

x-Q. 12. Did not the Forest Keepers at a given time make known that it was forbidden to do so?

A. Faith, I never heard of anything to that effect.

MR. BONNET: Will you allow me? You began the sentence and I wish that you would finish it, in order that we may know whether it was a question of gathering or of tearing up?

MR. GUIGNIER: Yes, the tearing up, it has never been tolerated.

1421

x-Q. 13. You have never been told that the gathering was forbidden, but did you know that the tearing up was ?

A. As to that, of course.

x-Q. 14. And at what moment ?

A. Always, of course, because that destroys the plants.

x-Q. 15. Now, la Vénérelle grows either in flat parts —Does it grow in flat parts and at the same time
1422 among the rocks, and in what proportions ? Which are the parts where it grows the most ?

A. Principally among the rocks, because in the plains cattle eat it. There is little on the border of fields.

x-Q. 16. Do cattle eat la Vénérelle in the plains ?

A. If some few plants are to be found there, of course they may be eaten, but such cases are very rare, because in the places where they grow there are very few where cattle are to be seen grazing.

1423 x-Q. 17. Are not sheep particularly fond of la Vénérelle ?

A. No.

x-Q. 18. About what quantity did you gather annually of this Vénérelle ?—You do not know ?

A. More or less.

x-Q. 19. More or less—What is approximately the sum you cash in yearly ? You know well ?—

A. I have gathered from 300 francs more or less, some seasons for 200 francs. There are not so regular
1424 cases.

x-Q. 20. How was it paid for ? So much the kilog ? How were you paid when you carried the plants to Fourvoirie ?

A. It was paid as was agreed.

x-Q. 21. How was this agreement ? By the kilog, by measure ?

A. So much the kilog.

x-Q. 22. You do not know exactly what it realized you yearly, approximately ?

1425

A. It might vary, it depended upon the agreement that existed between us and the Chartreux.

x-Q. 23. Have you gathered this Vénérelle elsewhere than in the group of the Grande Chartreuse ?

A. No.

x-Q. 24. Have you knowledge that this plant grows elsewhere than in the group of the Grande Chartreuse ?

A. We never go outside our country, we always remain in the surrounding mountains. 1426

x-Q. 25. Are you not the nephew of a Father Chartreux or of a Brother Chartreux ?

A. Yes, Sir.

x-Q. 26. Of whom ? What is his name ?

A. Brother Justin.

x-Q. 27. The nephew of Brother Justin ?

A. Yes.

x-Q. 28. Were you attached to the distillery for a long time ? Were you attached to the distillery ?

A. No. 1427

x-Q. 29. Was your uncle there for a long time ? Was he attached specially to the distillery ? Is it 30 years ?

A. I cannot tell you the date exactly, but it is a long time.

Re-direct Examination by Mr. Bonnet :

Re-d. Q. 1. In what department is your property situated ? Is it in the department of the Isère or in 1428 the department of the Savoy ?

A. In the department of the Savoy, Sir, that makes —our mountain with that of Mr. de Marcieux, that make the middle of the Savoy and of the Isère, our properties limit the Isère and the Savoy.

Re-d. Q. 2. Are you related to the Abbé Rey ?

A. No, Sir.

1429

INTERROGATORY OF MR. OCTAVE NOVEL (second witness) BY MR. BONNET :

Q. 1. Will you give me your name ?

A. Novel.

Q. 2. Your christian names ?

A. Octave.

Q. 3. Your profession ?

A. Attorney.

1430 Q. 4. Your residence ?

A. At Grenoble.

Q. 5. Do you know of the Collection of Administrative Acts of the Prefecture ?

A. Yes, I have seen it at the Prefecture.

Q. 6. What does this collection contain ?

A. It contains a Prefectoral order of 1900, dated November 10 or 11—I think it is November 10, 1900—relating to the tearing up of plants.

Q. 7. Have you consulted this collection ?

1431 A. I have consulted it, yes.

MR. GUIGNIER : I make this objection that the collection is not produced.

Q. 8. Have you consulted this collection ?

A. Yes, yes, I have consulted it.

Q. 9. You have personally examined it ?

A. I have personally examined it.

Q. 10. Did you find therein an order of 1896 or 1897 which was referred to by the Forest Keepers 1432 Feige and Georges and which, according to these witnesses, forbade the gathering of alpine plants ?

A. I did not find any other order than that of 1900, November, 1900.

Q. 11. Was it really this order that you saw in the collection of Administrative Acts ?

A. Yes, yes, it was that one, November 10, 1900, yes.

(The order is annexed and marked Exhibit No. 3.)

1433

Q. 12. Can you certify that it was really this order which you saw ?

A. Yes, I certify to it.

Q. 13. Do you wish to examine it beforehand ?

A. The order ?

Q. 14. Yes, and tell me if it is really the one you saw in the collection of Administrative Acts ?

A. Yes, it is absolutely the same, I certify to it.

Q. 15. Does this order affect the gathering of plants ? 1434

A. It affects the tearing up of the plants.

Mr. Bonnet : I thank you.

Interrogatory of Mr. Jules Fetaz (third witness) by Mr. Bonnet :

1435

Q. 1. What is your name ?

A. Jules Fetaz.

Q. 2. Your age ?

A. 49 years.

Q. 3. Your residence ?

A. Saint Pierre d'Entrement, Hamlet of St. Même.

Q. 4. In what department is it situated ?

A. Chambery, District of Chambery, Department of the Savoy.

Q. 5. Have you gathered plants ? 1436

A. Yes, Sir.

Q. 6. On whose account ?

A. Well, Sir, formerly I sold to a brother whose name was Samuel, and at other times to Mr. Dejey.

Q. 7. Who was brother Samuel ?

A. A former brother who kept school at St. Pierre d'Entremont, Isère.

Q. 8. For whom did he gather the plants ?

A. Faith, Sir, it is very probable it was for the Chartreux, but I delivered to him.

1437

Q. 9. For whom did Mr. Dejey gather the plants?

A. I cannot tell you, I have sold some to him also, I think it was for the Chartreux.

Q. 10. Have you gathered la Vénérelle?

A. Yes, Sir.

Q. 11. Where does this plant grow?

A. On our properties, on our mountains which we have: it was at the Alpette.

Q. 12. Do important quantities of it grow on your
1438 property?

A. Yes, Sir, fairly important.

Q. 13. Is it easy to gather la Vénérelle?

A. Ah, no, Sir, it is very dangerous, in the places where it is to be found it is very dangerous, it is among rocks, gullies, it is very dangerous to fall into them.

Q. 14. Do you know what the Chartreux did with la Venérélle?

A. No, Sir.

Q. 15. You said that it was very dangerous, are there
1439 accidents sometimes?

A. Ah, yes, Sir, I remember that there was one who fell while gathering these plants.

Q. 16. What was the name of the person who met with this—accident?

A. It was Hughes Rey, Sir.

Q. 17. Does la Vénérelle exist among your neighbours?

A. Yes, Sir, in the neighbouring parishes, on the property of Mr. Camand and that of Mr. de Marcieux,
1440 next to ours.

Q. 18. Are there important quantities of it?

A. Yes, Sir.

Q. 19. Does la Vénérelle exist also in the parishes?

A. Yes, Sir.

Q. 20. Have you gathered plants on properties belonging to parishes?

A. Yes, Sir, there is some.

Q. 21. Has any one ever prevented you from so doing?

A. No, sir, no one ever said anything.

1441

Q. 22. Did the Forest Keepers ever forbid you to make these gatherings ?

A. No, sir.

Q. 23. Are there not on the property of the Marquis de Marcieux especially certain plants ?

A. Sir, there may be some, but I gathered only la Vénérelle, myself.

Q. 24. Is it true that la Vénérelle cannot grow on your property, on the property of private persons, because the sheep eat it ? 1442

A. Sir, in places where sheep go, there is none, but it is only on the top of the rocks, in ravines, in precipices, that it grows.

Q. 25. Do sheep go there, in such places ?

A. Oh, no, they would fall : it is very dangerous to gather it for men.

CROSS-EXAMINATION OF MR. JULES FETAZ BY MR. GUIGNIER :

1443

x-Q. 1. Are you sure that the plants which Mr. Samuel or Mr. Dejey took were for the Chartreux or do you not know ?

A. No, I know nothing as to that.

x-Q. 2. You have stated that these plants were gathered, la Vénérelle, on private properties, and also on the properties of the State, in what proportions ? Were there more on the properties of private individuals than on the properties of the State, or what was the proportion, to your knowledge ? 1444

A. On the properties of the State there are forests, but la Vénérelle does not grow in large forests. That is what I understand.

x-Q. 3. But in the other parts, which are not planted with trees.

A. I have never been there, Sir.

x-Q. 4. You have gathered only on the properties—on your properties, your own ?

A. Yes, and on those adjoining ours, on that of Mr. Camand.

1445

x-Q. 5. What is the extent of yours ?

A. Oh, it is fairly large, I do not remember—you—

x-Q. 6. Are you the only proprietor ?

A. Oh, no.

x-Q. 7. You are several ?

A. About forty.

x-Q. 8. It is a mountain, then. How do you call it ?

A. The Alpette.

x-Q. 9. You are about forty ?

1446 A. Nearly, of proprietors.

x-Q. 10. What is nearly about the quantity you have been able to sell annually ?

A. I do not remember.

x-Q. 11. What sum of money have you been able to collect each year ?

A. I do not remember as to that, that depends upon the quantities gathered.

x-Q. 12. Was it 50 francs for a season, 100 francs, was it—

1447 A. I have told you ; it depends, *je ne puis pas*—

x-Q. 13. Yes, you are unable to know, now, did it not happen to some persons who made gatherings to tear up ? did they not tear up sometimes ? when gathering la Vénérelle does it not happen that the root is torn up ?

A. Oh, Sir, no, we take care not to pull up the root because it would not grow any more.

x-Q. 14. Has it not happened sometimes to inexperienced persons to tear up the roots, causing the Forest

1448 Keepers to protest ?

A. I cannot say that, I know nothing as to that.

x-Q. 15. You are sure that you never went on the property of the State ?

A. No, Sir.

x-Q. 16. Is it not next to your property ?

A. Yes, it is adjoining.

x-Q. 17. It is bordering upon it, you never went there ?

A. Oh, no, Sir.

1449

x-Q. 18. Then you do not know, you cannot say whether there is more on the property of the State than on your property?

A. I cannot say, but there are large woods on the State where it does not grow, it grows only in stony places.

INTERROGATORY OF MR. IGNACE REY (4th witness) BY MR. BONNET. 1450

Q. 1. What is your name?

A. Rey, Ignace.

Q. 2. Your christian name?

A. Ignace.

Q. 3. What is your age?

A. 44 years.

Q. 4. Your residence?

A. St. Pierre d'Entremont, Hamlet of St. Même, Savoy. 1451

Q. 6. Have you gathered plants?

A. Yes, Sir.

Q. 7. For whose account?

A. For account of Mr. Dejey.

Q. 8. Who is Mr. Dejey?

A. Mr. Dejey is an individual who bought la Vénérelle for account of the Chartreux, because mule-drivers were seen going in search of it at St. Pierre d'Entremont.

Q. 9. Whose mule-drivers? 1452

A. The Chartreux Fathers'.

Q. 10. Do you know this plant? (Presenting to the witness the Exhibit No. 1.)

A. Yes, Sir.

Q. 11. What is it?

A. It is la Vénérelle.

Q. 12. Do you know this one? (Presenting to the witness the Exhibit No. 2.)

A. Yes, Sir.

1453

Q. 13. What is it ?

A. It is la Vénérelle also.

Q. 14. What difference is there ?

A. That one is green, it has not the flowers.

Q. 15. It has not yet flowered ?

A. No, Sir.

Q. 16. Was it you who gathered this one, the green one ?

A. No, Sir.

1454 Q. 17. Did you gather la Vénérelle for the Chartreux Fathers ?

A. No, sir ; it is for Mr. Dejey, after all.

Q. 18. And for whom did Mr. Dejey gather the plants ?

A. He gathered them for the Chartreux Fathers, who bought them.

Q. 19. Is it easy to gather la Vénérelle ?

A. No, sir ; it is in precipitous places, among the rocks.

1455 Q. 20. Is there a certain amount of danger ?

A. It is very dangerous, Sir.

Q. 21. Do you know what the Chartreux Fathers did with la Vénérelle ?

A. Ah, we did not concern ourselves as to that, Sir.

Q. 22. Did you gather other plants ?

A. Yes, sometimes.

Q. 23. For whom have you gathered these other plants ?

A. Well, always for Mr. Dejey.

1456 Q. 24. Where did you gather la Vénérelle which you delivered to Mr. Dejey ?

A. On our property, on our mountains.

Q. 25. Have you a property ?

A. Yes, we are several proprietors of a mountain.

Q. 26. Does much Vénérelle grow on your property ?

A. Yes, Sir, in large quantities.

Q. 27. Have you gathered plants in places belonging to parishes ?

A. Yes, Sir.

Q. 28. Is there much Vénérelle in those places ?

1457

A. Yes; there is.

Q. 29. Where is there the most Vénérelle; is it on your property, those of your neighbors—

A. In large quantities, yes, Sir.

Q. 30. Or those of parishes?

A. Among the neighbors of our mountain, there are Mr. de Marcieux, and then again Mr. Camand.

Q. 31. Where is the most of it?

A. It is on our property, Sir.

Q. 32. Do you know any Forest Keepers? 1458

A. Yes, Sir.

Q. 33. Did they tell you that it was forbidden to gather plants?

A. We have never remarked that, they have never said anything, they have never forbidden the gathering of it.

Q. 34. Have you ever remarked that la Vénérelle could not grow on your property and arrive at maturity because the sheep ate it?

A. No, Sir; because in the places where la Vénérelle 1459
is found it is impossible for sheep to reach. These places are in rocks, crevices, cracks. Ladders are even necessary to go and get it.

CROSS-EXAMINATION BY MR. GUIGNIER:

x-Q. 1. Are you sure that the plants you gathered for Mr. Dejey were for the Chartreux?

A. Mr. Dejey told us so, that it was for the Chartreux. 1460

x-Q. 2. You have gathered la Vénérelle—and have you gathered it only on your property— How is it called?

A. It is the Alpette.

x-Q. 3. Which belongs to you in part, in a certain proportion?

A. Yes, Sir.

x-Q. 4. How many co-proprietors are you?

A. Oh, faith—

x-Q. 5. You do not know—This mountain of the

1461

Alpette, for what is it utilized, do they pasture upon it sheep, cattle?

A. There are some cattle, some sheep.

x-Q. 6. Are there some level parts in this mountain, or is it only rocky?

A. Yes, there is a part in meadow-land, which could even be mowed.

x-Q. 7. Is the meadow part more important than the rocky part?

1462 A. Oh, it is about the same, Sir.

x-Q. 8. It is about equal—Now, have you never gathered la Vénérelle in other places than the Alpette?

A. On our neighbours', Mr. de Marcieux, the parishes, and Mr. Camand.

x-Q. 9. Have you gathered it on the properties of the State?

A. No, Sir.

x-Q. 10. You have never been there?

1463 A. No, Sir.

x-Q. 11. Nor on the property of the Grande Chartreuse?

A. No, Sir.

x-Q. 12. Is not the Alpette adjacent to the property of the Grande Chartreuse?

A. No, Sir, it is far away.

x-Q. 13. It is far away—You cannot state in what proportions the Vénérelle plant was to be found in the rocky parts, and in what proportions it was in the

1464 flat parts?

A. In the flat parts there is no Vénérelle.

x-Q. 14. There is no Vénérelle?

A. No, Sir.

x-Q. 15. You do not know what proportion there is of this Vénérelle on the properties of private persons, and on the properties of the State? Do you know if there is any on the properties of the State?

A. No, Sir.

x-Q. 16. You do not know?

A. I do not know.

1465

x-Q. 17. Is there any Vénérelle in other properties than the Alpette?—on your other properties?

A. Yes, Sir, on the properties of parishes, as on these mountains, which are neighbouring.

x-Q. 18. But you, personally, you have but your co-property in the Alpette?

A. Yes, Sir.

x-Q. 19. You have no other properties which contain plants?

A. Yes, we have— 1466

x-Q. 20. Plants, la Vénérelle?

A. Yes, at the bottom of the Alpette.

x-Q. 21. Have you private properties which adjoin the Alpette?

A. Yes, Sir.

x-Q. 22. And on these properties, are they rocky properties, or cultivated, or meadows?

A. It is not cultivated.

x-Q. 23. Are they meadows?

A. Meadows. 1467

x-Q. 24. And on these meadows, is there any Vénérelle?

A. In the craggy parts there is some.

x-Q. 25. What is the quantity per year that you have been able to sell to Mr. Dejey?

A. Oh, a large quantity, Sir.

x-Q. 26. How much money have you been able to make each year?

A. Oh, one does not remember very well, Sir.

x-Q. 27. Is it twenty, fifty, one hundred francs per 1468 year?

A. Yes, two or three hundred francs.

x-Q. 28. Do you know, can you say if all the co-proprietors of the Alpette made gatherings or if only a few of you did so?

A. Not all, Sir.

x-Q. 29. How many, about, to your knowledge, occupied themselves with the gathering?

A. One does not remember very well.

x-Q. 30. Were you two, three—

1469

A. About ten or fifteen.

x-Q. 31. On the Alpette, is it not so, you did not gather elsewhere than on the Alpette ?

A. Or on the neighbouring mountains, the parishes and Mr. de Marcieux.

x-Q. 32. Yes, on the Alpette or on the mountains of Mr. de Marcieux and of Mr. Camand ?

A. Yes, and Mr. Camand.

x-Q. 33. These receipts, which varied between 100,
1470 200, 300 francs per year were derived entirely from your gatherings ?

A. Yes, Sir.

x-Q. 34. And you cannot state precisely what is the annual figure ?

A. No, Sir.

x-Q. 35. You cannot.— And do you know how many kilogs may have sold and how much you sold the kilog at ?

1471 Mr. Bonnet : Objection. I would ask Mr. Guignier to specify how many kilogs of what ?

Mr. Guignier : Of la Vénérelle. How many kilogs about per year, and what price you were paid ?

A. Sir, that—there were years that we were paid more than others.

x-Q. 36. About, in short.—The whole truth must be told, is it not so, it is not of great importance to you to tell it. How many kilogs ? You must know how
1472 much Mr. Dejey gave you per kilog ?

A. One does not remember very well.

x-Q. 37. Was it one franc, two francs, five francs ? You must have some idea ? You are absolutely unable to say how much you received per kilog, and the quantity of kilogs you may have furnished approximatively per year ?

A. I do not remember very well.

x-Q. 38. Can you testify that you have made gatherings every year, or are there some years that you have not made any ?

1473

A. There are some years when we did not make any, that depends upon the work we have.

x-Q. 39. At what time of the season do you make the gatherings ?

A. Thereabouts, in the month of August.

x-Q. 40. Because you have another profession, your profession is not to give yourself up to gathering. What is your profession ?

A. A cultivator.

1474

RE-DIRECT EXAMINATION BY MR. BONNET :

Re-d. Q. 1. Mr. Dejey, you have stated, declared to you that he gathered the plants for the Chartreux Fathers, and you have stated that you have seen some mules ?

A. Yes, to go seeking, which I knew very well was for the Chartreux Fathers.

Re-d. Q. 2. Where did these mules go ?

A. To St. Pierre d'Entremont.

1475

Re-d. Q. 3. To whom did they go ?

A. To Mr. Dejey.

Re-d. Q. 4. What did they go to fetch ?

A. They went to fetch flowers, plants.

Re-d. Q. 5. To whom did these mules belong ?

A. To the Chartreux Fathers.

RE-CROSS-EXAMINATION BY MR. GUIGNIER :

Re-x-Q. 1. Have you often seen them, these mules coming to Mr. Dejey ?

1476

A. Yes, I have seen them sometimes, because one is not always in the town of Saint Pierre.

Re-x-Q. 2. Now you have said that these mules went to fetch plants, well then, was it especially for la Vénérelle or was it all kinds of plants ?

A. Ah, all kinds of plants, Sir.

Re-x-Q. 3. And you do not know whether there was or there was not la Vénérelle among the plants which these mules went to carry ?

A. Oh, there was some Vénérelle, Sir.

1477

INTERROGATORY OF MR. LÉONCE MARIUS BELIN (Fifth Witness) BY MR. BONNET:

Q. 1. What is your name?

A. Léonce Marius Belin.

Q. 2. Your age?

A. 51 years.

Q. 3. Your residence?

A. At Fures, Isère, and a part of the year at
1478 Entremont le Vieux,—in the Desert habitually at Fures.

Q. 4. What is your profession?

A. I manufactured formerly here ammoniac, now I make it in Turin; I do business always here, I have a factory at Turin.

Q. 5. You have properties, at what place?

A. In the Desert, parish of Entremont le Vieux, Savoy.

Q. 6. Do you know Mr. François Dejey?

1479 A. Mr. François Dejey?

Q. 7. Do you know Mr. Dejey.

A. No, I do not know Mr. Dejey.

Q. 8. You do not know him?

A. No.

Q. 9. On your properties does—

MR. BELIN.—Is he an Architect here?

MR. BONNET.—No. Do you know la Vénérelle?

A. Perfectly.—Vulnerary you mean.

1480 Q. 10. Do you know this plant?

(Mr. Bonnet presents to the witness the Exhibit No. 1.)

A. Ah, yes, slightly the smell of arnica.

Q. 11. What is it?

A. It is what is called la Vénérelle in the mountains.

Q. 12. Do you know this one?

(Mr. Bonnet presents to the witness the Exhibit No. 2.)

1481

A. Yes, it is the same thing.

Q. 13. What difference is there between the one I showed you and this one?

A. It is absolutely the same.

Q. 14. What difference is there between the two?

A. There are also flowers, it is alsolutely the same thing.

Q. 15. Are they in the same state?

A. The flowers?

Q. 16. No, the plants? 1482

A. But that one only just begins to grow.

Q. 17. Does la Vénérelle grow on your property?

A. Yes.

Q. 18. Do important quantities of it grow there?

A. Oh, very important. An individual who died five or six years ago gathered it during two months, he did nothing else, absolutely.

Q. 19. Do you know for whose account he gathered it?

A. For account of the Chartreux . . . A certain 1483 Rennes,—that was his surname,—he died six or seven years ago, he lived at the hamlet of the Desert.

Q. 20. Do you permit the gathering of la Vénérelle on your property?

A. Oh, yes, all the people of Entremont allow persons whom they know to gather,—not by no matter whom, but by persons they know, they have never objected to it. They gather it themselves, when the Chartreux bought it they gathered it.

Q. 21. Have you heard say that sheep eat it as fast 1484 as it grows?

A. I have seen vulnerary precisely where sheep go, they cannot go everywhere. I do not know whether they are as fond of it as that, I know, in any case, places where there are quantities of vulnerary, which are accessible even; now, I have never studied this question specially, but there are quantities at Entremont le Vieux.

Q. 22. And this Vénérelle reaches maturity?

A. Very well, very well.

1485

Q. 23. And you have never remarked that sheep eat it to such an extent that it cannot ripen ?

A. Sheep go more or less everywhere, but there are crags where it would be dangerous for them to go, but such places are stopped up with faggots so that they cannot go there, without which they might fall down the precipices.

Q. 24. You know a mountain which is called the Autran mountain ?

1486 A. I have the right to hunt on this mountain. They are parish lands which do not come under forest regulations.

Q. 25. Do people go and gather currently la Vénérelle upon it ?

A. Yes, if no one prevents it. It is the lessee who might object to it, the lessee of the pasturage. I am not lessee of the pasture, but of the shooting. It is a mountain eight kilometres long by one thousand metres wide, and on the southern parts, among the

1487 crags, there are quantities of Vénérelle.

Q. 26. What do you call crags ?

A. You know the steeps ; there are terraces at different stages where it is possible to go, others where it is impossible, there are only crags. There are parts where one can descend, these crags are sometimes sloping, sheep are prevented from going there, because they might slip. If one jumped all the others would jump.

Q. 27. Are there important quantities of Vénérelle

1488 in those places ?

A. Yes, there are some who made good sums monthly by gathering Vénérelle.

Q. 28. On this mountain of Mount Autran does the lessee forbid the gathering ?

A. Never. I was the lessee of the parturages for about fifteen years, now I am not the lessee of the pasturages, I am only the lessee of the shooting.

Q. 29. You did not interdict the gathering ?

A. No, not at all.

1489

CROSS-EXAMINATION OF MR. BELIN BY MR. GUIGNIER:

x-Q. 1. Are you sure that la Vénérelle was for the Chartreux?

A. Yes, absolutely sure.

x-Q. 2. What are the sources of information which permit you to affirm that?

A. Well, you see, the people who were there, in the hamlet of the Desert, said: we gather that for the Chartreux, and effectively they started for the Char- 1490
treuse.

x-Q. 3. It was the people who gathered who told you that?

A. Precisely.

x-Q. 4. Now, Sir, as to the quantity, can you say about how much, what quantity could be gathered on your property, how many kilogs, approximately?

A. It is very difficult. I cannot give you this information.

x-Q. 5. Can you not tell me either what the kilog 1491
sold for?

A. I could find out, if not at once, I could find out in two or three days.

x-Q. 6. Do you know if the people who gathered on your property gathered at the same time on the property of the State?

A. The State has no property there; there are some parish lands that are governed by Forest regulations, and others that are not. In general vulnerary does not grow in forests, it grows in arid places, in holes, in the 1492
crevices of rocks, and these places are not governed by Forest regulations, they are parish lands not under Forest regulations, or private property.

x-Q. 7. What is the surface of your property?

A. Mine is not very large, but the surface of Mount Autran is six kilometres long and fifteen hundred metres wide.

x-Q. 8. With regard to your property, you cannot tell the number of hectares?

A. Yes, nearly. It is in strips. The Forest of la

1493

Veuillette they are parish lands that have been divided, I have five parts of it: the parts are about one kilometre 800 or 900 metres long.

x-Q. 9. By how many wide?

A. By thirty to forty wide, I have five parts.

x-Q. 10. Thirty to forty metres?

A. Yes, it is situated more particularly among the rocks, not in the middle of the forest.

x-Q. 11. Have you not been, Mr. Belin, the attorney
1494 in fact of the Chartreux on certain occasions?

A. Yes, at Fures.

x-Q. 12. I put this question to you, because I have had to occupy myself— You are no longer their attorney?

A. No, it was at a time—They had no one at Fures—

RE-DIRECT EXAMINATION OF MR. BELIN BY MR. BONNET:

1495 Re-d. Q. 1. You have said, Mr. Belin, that you had five parts in your property, and you have said that each part was 800 metres long by 40 wide: the whole or the five parts?

A. Each part, but vulnerary is only principally to be found on one part, the part that looks towards Corbel. Moreover I wrote to the Municipal Counsellor of the Desert, because I did not exactly know where the vulnerary was to be found—I knew him,—and he told me that it was on the south side; I did
1496 not know this south side.

Re-d. Q. 2. Will you read it?

MR. GUIGNIER: Objection, unless the letter be annexed.

A. I have only known for three days that I was to come.

1497

"ENTREMONT LE VIEUX, June 4, 1906.

"MY DEAR MR. BELIN,

"In reply to your favor of the 2nd instant, I "beg to inform you that the plants gathered at "Entremont le Vieux, and sold to the Chartreux "are vulnerary, mint and thyme.

"You tell me that there is vulnerary on one "of your properties, at the Veuillette; yes, and "on that coming from Serpollet-Cattelin it is to 1498
"be found through nearly all its length: "I say those which are near to the Corbel rock, "vulnerary is gathered considerably on the "rock which is situated on the borders of "Corbel and belongs to the proprietors of the "Desert. These 3 plants are gathered on the "private land of the inhabitants of Entremont "le Vieux."

(signed) JOCQUES."

Re-d. Q. 3. Who is the signer of this letter? 1499
A. Henri Jocques.
Re-d. Q. 4. What is he?
A. He is a proprietor, a Municipal Counsellor.
Re-d. Q. 5. Of what parish?
A. Of Entremont le Vieux, Hamlet of the Desert.
Re-d. Q. 6. Will you give the spelling of the name?
A. J-o-c-q-u-e-s, Henri.

(The letter is annexed and marked Exhibit No. 4.)

1500

MR. BELIN: I was with him precisely the other day in this property, but not in the Corbel part, in a part where it is to be found also, he does not remember, it is on the borders of the parish of St. Jean de Court. I go there frequently with my family to lunch. Vulnerary is there, at our feet, when we lunch there is about three metres to go. Vulnerary is there all along the rock.

Re-d. Q. 7. Are there important quantities of it?
A. Yes, Sir.

1501

Re-d. Q. 8. Where is this place situated?
A. On this property, the parts are not altogether.
Re-d. Q. 9. What is the name of the property?
A. La Huillette.
Re-d. Q. 10. What Department?
A. Savoy.
Re-d. Q. 11. Who does it belong to?
A. To me.

1502 MR. GUIGNIER: I make objection that the letter which is produced is not produced by the signer.

MR. BONNET: (To Mr. Belin)—You will kindly certify to the authenticity. (The letter is signed by the witness.)

RE-CROSS-EXAMINATION OF MR. BELIN BY MR. GUIGNIER:

Re-x-Q. 1. Now, Mr. Belin, all that you have just said, you only know through the explanations that Mr.
1503 Jocques gave you?

A. No, that which refers to vulnerary in the part about which I have just spoken, I have known for a long time. Every time I pass there we gather some of them: it is claimed that they are good for rheumatism.

Re-x-Q. 2. Concerning the vulnerary, and certain other explanations, you know through Mr. Jocques?

A. No, through myself, but I did not know there was this quantity along the rocks of Corbel, I knew
1504 particularly that there was some on the St. Jean de Court side; as to that part about which he speaks in his letter, I do not often go there, it is very bad. I go hunting there or with my family, I do not venture among the dangerous crags without necessity. But at the place I mentioned lastly, on the borders of St. Jean de Court, I have always seen some, every time I have come, I have seen or gathered some.

Re-x-Q. 3. At what time is this gathering done?

A. We always go there in August or September, I remain three months in this country.

1505

INTERROGATORY OF MR. SÉRAPHIN REY (sixth witness) BY MR. BONNET :

Q. 1. What is your name?

A. Séraphin Rey.

Q. 2. What is your Christian name?

A. Séraphin.

Q. 3. What is your age?

A. 38 years.

Q. 4. Your residence? 1506

A. Saint Pierre d'Entremont, Savoy, Canton of the Echelles.

Q. 5. Are you related to Father Rey?—to the Abbé Rey?—of the Chartreux?

A. To the Abbé Rey.

Q. 6. Do you know the Abbé Rey?

A. I do not know him.

Q. 7. Have you gathered plants?

A. Yes, Sir.

Q. 8. For whose account? 1507

A. For Mr. Dejey.

Q. 9. For how long?

A. For about ten years I have gathered them.

Q. 10. What is Mr. Dejey?

A. He is an employee—In short he kept school. I have sold him la Vénérelle.

Q. 11. Do you know for whom he bought la Vénérelle?

A. He told me that it was for the Chartreux Fathers that is all. 1508

Q. 12. Have you delivered other plants to Mr. Dejey, also?

A. No, Sir, I have gathered only la Vénérelle.

Q. 13. Do you know this plant? (Mr. Bonnet presents to the witness the Exhibit No. 1).

A. It is la Vénérelle.

Q. 14. And this one? (Mr. Bonnet presents to the witness the Exhibit No. 2).

A. It is the same thing.

1509

Q. 15. What difference is there between this last one I have shown you and the first?

A. That one is freshly gathered.

Q. 16. Is this one ripe?

A. Ah, no, Sir.

Q. 17. The last one I have shown you?

A. Ah, no, Sir.

Q. 18. Was it you who gathered that one?

A. It was my brother.

1510 Q. 19. Where does la Vénérelle grow?

A. It grows in the mountains.

Q. 20. In what part of the mountains?

A. It grows on steeps, in very dangerous places, in very precipitous places, among the crags.

Q. 21. Among crags?

A. Among crags. Some persons have been obliged to cut down the fir trees to climb among the crags to gather it.

Q. 22. Is it dangerous, have there been accidents?

1511 A. An individual from my village fell, he died on spot, 12 or 13 years ago.

Q. 23. And what was he about to do?

A. To gather la Vénérelle. His sack was near him. There were about 10 kilogs in it.

Q. 24. Do you—Where have you gathered la Vénérelle?

A. On our property, Sir.

Q. 25. You are a proprietor?

A. I am proprietor of the mountain.

1512 Q. 26. What mountain?

A. The Alpette.

Q. 27. Is there much Vénérelle on this mountain?

A. Yes, Sir, there is some.

Q. 28. To whom does the mountain of the Alpette belong?

A. We are several proprietors, about thirty.

Q. 29. Have you gathered la Vénérelle in the parishes?

A. Yes, Sir. There is Mr. de Marcieux and then again Mr. Camand.

1513

Q. 30. But with regard to Mr. de Marcieux and Mr. Camand, to whom does the ground belong?

A. To them.

Q. 31. Do you know any Forest Keepers?

A. Yes, I know two of them.

Q. 32. Did they tell you that it was forbidden to gather plants?

A. Oh, never in my life.

Q. 33. Is it true that la Vénérelle cannot be gathered on the property of private individuals because sheep 1514
eat it?

A. But sheep cannot go among the crags, in places where it is necessary to put fir trees to climb up to gather it. What do you think— It is impossible. What a quantity remains even among the rocks that men cannot go and gather— It is impossible.

Cross-examination by Mr. Guignier:

x-Q. 1. Can you tell me what quantity you gathered 1515
each year?

A. Oh, how can you?

x-Q. 2. On the Alpette, what is the profit you obtain from this gathering, about, approximately?

A. Oh—

x-Q. 3. You are unable to know?

A. I cannot tell you as to that.

x-Q. 4. Do you know how many among, of your co-proprietors, who were about thirty, occupied themselves with the gathering of la Vénérelle? 1516

A. Oh, no.

x-Q. 5. You do not know?

A. No.

x-Q. 6. Were you five, ten?

A. Oh, I do not know.

x-Q. 7. You are unable to know?

A. No.

x-Q. 8. However you know some persons who, in your parish occupied themselves with gathering?

A. Oh, I do not know.

1517

x-Q. 9. Not even in your parish? You do not know those who occupied themselves with gathering?

A. No.

x-Q. 10. You have never gathered plants elsewhere than on the Alpette, and on your private properties?

A. I have gathered la Vénérelle on our property and then again on the property of Mr. de Marcieux and then on that of Mr. Camand, which adjoin ours on either side.

1518 x-Q. 11. You said just now that you have gathered for about ten years. Do you not gather any longer?

MR. BONNET. Objection, the witness did not make this reply.

MR. GUIGNIER. I thought so.

MR. BONNET. He said that he had gathered plants during ten years.

MR. GUIGNIER. During ten years. At what moment is that placed? Is it the last ten years,

1519 or before?

A. Oh, that—

x-Q. 12. Since how long do you no longer gather?

A. Since last year. This year it cannot be gathered yet, it is not ripe.

x-Q. 13. But last year you gathered it still?

A. Yes, Sir.

x-Q. 14. During about ten years, you say?

A. About ten years.

1520 x-Q. 15. You cannot affirm the quantity?

A. No, one does not have that very well in his head.

x-Q. 16. You have not gathered elsewhere than on the Alpette?

A. No, there is sufficient of it on our mountain.

x-Q. 17. This mountain is utilized also for the pasturing of sheep?

A. Yes, Sir.

x-Q. 18. You do not know the quantity of sheep—

A. How is it possible?

x-Q. 19. Do you let it? No, it is for the use of all

1521

the proprietors. You do not know the quantity that may be spread over this mountain each year ?

A. No.

x-Q. 20. Have you been a servant of the Chartreux ?

A. Yes, Sir.

x-Q. 21. How many years ?

A. Fourteen months.

x-Q. 22. Not more ? At what epoch ?—You do not know ?

A. No, that, I cannot tell you, I do not know, I 1522 know that I remained with them fourteen months, employee, at the Chartreuse.

Re-direct Examination by Mr. Bonnet.

Re-d. Q. 1. Since how long—I will put the question to you in another form—since how long are you no longer a domestic of the Chartreux ?

A. Oh, it is about 13 or 14 years. I might have been at that time—about 20, 22, 24 years. It could be 1523 known—

Re-d. Q. 2. Since about 14 years you are no longer servant ?

A. Oh, certainly, it is already some time—I could not affirm it, but I put it at about 13 or 14 years.

Second Session of Thursday, June 7, 1906, at 1524 Grenoble.

Interrogatory of Mr. Joseph Allier by Mr. Bonnet :

Q. 1. What is your name ?

A. Joseph Allier.

Q. 2. What is your age ?

A. 51 years.

Q. 3. Where is your residence ?

A. 26, Cours Saint André.

1525

Q. 4. Your profession ?

A. A printer, under the style of Allier Frères.

Q. 5. Is it you who printed the labels that the Pères Chartreux employed before their expulsion ?

A. It is we who printed them, or at least I have always seen them printed in the house.

Q. 6. Since how long ?

A. When I was a child they were printed in the house, I do not think that they may have made any
1526 change, that they may have printed them elsewhere.

Q. 7. The name which is printed at the bottom of the label is really your name ?

A. It is absolutely our name.

Q. 8. Have you printed during a certain time the decisions of the Prefecture ?

A. We have printed them, we print them still.

Q. 9. And you print them still ?

A. Yes.

Q. 10. Since how long are you the printer of the
1527 Prefecture ?

A. Since a very long time, since the origin of the Prefectures. But since 1877 a part of the printing has been put up for adjudication ; the printing done by departmental funds is not done by us, it is given to the highest bidder which is not the firm of Allier, but for all time we have been the personal printers of the Préfet and of the printing paid by the parish, and the decision in question comes under the category of such printing.

1528 Q. 11. Have you not been solicited by the Liquidator to print the labels which he makes use of actually ?

A. Yes, Sir, I cannot state exactly the date, I think the Chartreux Fathers were not yet gone, we already did no more printing for them, the manufacture had ceased. I received—for my brother was absent—three gentlemen, who said that they were sent by Mr. Lecouturier, who came to ask if, should occasion offer, we would undertake to do the labels of the new chartreuse by making use of the old. We replied that that did not seem possible to us. These gentlemen

1529

did not insist, the conservation was of short duration. I call to mind however having made this remark, having asked these gentlemen if Mr. Lecouturier was the liquidator, and if his chartreuse would be as good, but these gentlemen left.

After this formal step, which occurred some considerable time ago—I do not remember the date, it was two or three years ago, the persons did not state their names, they probably remember better than I do—in the course of last year my brother received the 1530 visit, not specially on that occasion— One day when we had a client in our office, a client whose name I can give, he said : " Why will you not print the labels of the chartreuse for the Liquidator ? " This gentleman, must I give you his name ?

Q. 12. Yes, Sir.

A. It was Mr. Joya, senior. Some time afterwards we received the visit of Mr. Jorsaille, a paper manufacturer, who also did not find me in, myself, but he found my brother. He said : I am very glad to renew 1531 acquaintance with you, I did my 13 days with you, I will ask you for some information not with regard to the labels, but to the paper. This Mr. Jorsaille is the son-in-law of Mr. Guely—who was a paper manufacturer at Fures, which Mr. Guely made the packing paper of the Chartreux. This Mr. Jorsaille asked my brother for information as to the size of the paper, if we had any remaining of the Chartreux Fathers, he asked how many labels we printed on a sheet and different information of this kind which my brother 1532 did not give.

Lastly—it was perhaps the most important visit—it must have been last autumn, I had, one Saturday, the visit of a representative from Lyons. I am unable to say if he is still a representative or if he is established. He was a workman in our firm 20 to 25 years ago—

Q. 13. What is his name ?

A. Mr. Achard. I recollect having received his visit on a Saturday, he requested an interview with

1533

me at my house for the following day, Sunday. I said to him: We shall not be there, no one is there, come to-morrow. The next day he said to me: I come about an important affair, in the name of a company the name of which I need not mention to you, to know if you refuse definitely to print the labels of the Chartreuse the same as they were formerly, with your name. Thereupon I received him with little ceremony, and this gentleman went away saying: you are
1534 lucky enough to be rich enough to refuse what is offered you, you would have had not only the labels, but all the notices of advertisement, which will be considerable.

Q. 14. When Mr. Joya came to see you, did he say that he came on the part of the Liquidator?

A. No, neither did Mr. Joya, Mr. Jorsaille nor Mr. Achard, who said to me that he came in the name of a Company.

Q. 15. How did you come to know that it was indi-
1535 rectly the Liquidator who sent them?

A. Oh, because we thought that the making of these labels could only be useful to the Liquidator, that if our name was sought, it was to put upon the new products a label which indicated that it was the old product, seeing that the labels bore the name "Allier".

MR. GUIGNIER: I make objection to the question posed, as leading.

MR. BONNET: In what, leading?

1536 MR. PELLERIN: It is leading.

MR. BONNET: I note that you are unable to specify clearly.

MR. ALLIER: We thought that it was question of Mr. Lecouturier or of his successor, of Mr. Cusenier or of the company, because it alone was interested in asking us for these labels. Simple common sense shows that, seeing that they wanted a label bearing the name of Allier. Already the Paris Journals had stated that our name was the only means of preventing possible

1537

confusion between the old and the new label; from the fact that we were earnestly asked to put our name on them, we comprehended that it was desired to pass off the new chartreuse with a label identically the same as the old one.

Q. 16. You declared just now, Sir, that you were the printer of the Prefecture?

A. Yes, Sir.

Q. 17. Did you print a decision of the tenth of November, 1900, relating to the gathering of the plants— 1538
or rather to the tearing up of the Alpine plants?

A. Yes, Sir.

Q. 18. Could you produce this decision?

A. Or give a copy of what was printed, and the "order to print" given by the Prefecture.

Q. 19. The order to print which you hand over here is exactly conformable?

A. With the printing.

Q. 20. With the copy which you hand over at the same time? 1539

A. Or rather it is the copy which I hand over to you which is conformable to the order to print.

Q. 21. Can you leave the order to print? Do you see any objection?

A. I see no objection to so doing.

(The copies deposed by Mr. Allier are annexed and marked Exhibits No. 5 and No. 6.)

MR. ALLIER: That, that is a copy which indicates the number of posters that were printed. 1540

MR. BONNET: You will be kind enough to attach your signature to it.

Q. 22. Do you not remember having printed another Prefectoral decision of 1896 or 1897, touching Alpine plants?

A. I cannot call to mind—If a date was given me—

Q. 23. From 1896 to 1897; a witness has affirmed that there was a Prefectoral decision at that date. Can you call it to mind?

1541 A. I cannot call such to mind at the end of ten years, which there are. We do so much printing—But it could be verified.

CROSS-EXAMINATION OF MR. ALLIER BY MR. GUIGNIER:

x-Q. 1. I will put this question to Mr. Allier. Is it he who makes the labels for the Chartreux Fathers at Tarragona?

1542 A. We make the labels of the Union Agricola which orders them from us, and which pays us for them.

x-Q. 2. Now, Mr. Allier, you said just now that several persons had presented themselves to you, and you said that you presumed that it was on the part of Mr. Lecouturier, who appeared to you to be the only person interested in having labels bearing your name. I ask you if that is only a presumption on your part?

A. As to the three first persons that came there is no doubt possible; they said that they were sent by

1543 Mr. Lecouturier.

x-Q. 3. They did not give their names?

A. No, the visit of Mr. Joya, of Mr. Verdaille are visits in which these gentlemen did not say on the part of whom they came, in consequence it is a supposition on our part. Now on the third visit of Mr. Achard, this gentleman did not mention the name of Mr. Lecouturier, but he said that he came in the name of a company desirous of printing the labels of the chartreuse: we thought that it was Mr. Cusenier or the

1544 Société Cusenier.

x-Q. 4. It is a supposition on your part, you cannot be certain that Mr. Lecouturier had sent these persons, because you have no material or moral proofs?

A. Oh, moral, yes. To whom would such be of service?

x-Q. 5. It might be that some companies, in view of becoming possessors of the mark at a given moment, may have had the idea?

A. It was not for later on, it was to make this label immediately. Mr. Achard did not say to us: would

1545

you one day or another make this label, he said to us : will you make it.

x-Q. 6. Those are suppositions ?

A. I cannot say that he came in the name of Mr. Lecouturier, since he did not say so.

x-Q. 7. Do you not know if besides you labels were made by others for the Convent of the Grande Chartreuse ?

A. I have heard that since the departure of the Chartreux. 1546

x-Q. 8. Before even ?

A. No, only imitations of them were made. We were the only printers of the Chartreux while they were at Fourvoirie.

x-Q. 9. Is it to your knowledge that they may have had labels made at Curriéres and at Miribel les Echelles by the Assumptionists ?

A. No, no, that would surprise us greatly.

x-Q. 10. At Curriéres, it was . . .

A. There was no lithography, therefore they could 1547 not make them. There was only a typography for deaf and dumb apprentices, it was materially impossible to make labels. Again the paper was delivered direct to us by the firm that made it, which has never been sent to others than ourselves ; there was a very exact control, all the sheets were counted, it is not possible for any to have been made elsewhere than with us.

1548

Interrogatory of Mr. Baboin (second witness) by Mr. Bonnet :

Mr. Guignier : I wish to remark that the name of Mr. Baboin has but this instant been given me.

Mr. Bonnet : Allow me to inform you that in a letter addressed to Mr. Kelly, and in which figured the names of all the witnesses, we gave the name of a professor of Pharmacy whose name

1549

we did not know. It is this professor of Pharmacy who is Mr. Baboin. If I reply, it is in order that the stenographer may register my declaration, I do not think that there are several professors of Pharmacy at Grenoble.

MR. BABOIN : Just at this moment I am not professor—

Q. 1. What is your name ?

1550 A. Baboin.

Q. 2. What is your christian name ?

A. Achille.

Q. 3. What is your age ?

A. 49 years.

Q. 4. Your residence ?

A. Rue du President Carnot, No. 1.

Q. 5. Your profession ?

A. Pharmacist of the first class, ex-professor of pharmacy and medical matters at the School of Medi-

1551 cine at Grenoble.

Q. 6. Do you profess at the present time ?

A. At the School ? No.

Q. 7. Where do you profess ?

A. Nowhere.

Q. 8. You have professed ?

A. Yes, for twelve years.

Q. 9. You have been a professor of Pharmacy, you say ?

A. Yes, Sir, I am so no longer.

1552 Q. 10. Which are the two greatest branches of the industry that you profess ?

A. Pharmacy and Medical matter.

Q. 11. Does not Botany form part of the teaching of Pharmacy ?

A. Yes,—not exactly, we do not practice Botany, but medical matters, that which comprehends Botany and the study of the virtue of plants. The way to recognize them. In short it is Botany.

Q. 12. Are you acquainted with what in this country is called la Vénérelle ?

1553

A. Yes, Sir.

Q. 13. Or Vulnerary of the Chartreux ?

A. Vulnerary of the Chartreux, yes.

Q. 14. Can you give me the scientific name of Vulnerary of the Chartreux ?

A. Hypericum Nummularium.

Q. 15. Do you recognize this plant, Sir ?

(Mr. Bonnet presents to the witness the Exhibit No. 1.) 1554

A. It is Hypericum Nummularium, that.

Q. 16. Do you know this one, also ?

(Mr. Bonnet presents to the witness the Exhibit No. 2.)

A. It is the same plant, but the fresh plant.

Q. 17. Has not the Hypericum Nummularium still another name ?

A. In what sense ? How, another name ? It is its 1555 name, in short.

Q. 18. Has it not still another name by which it is known ? Thus, for example, in the Prefectoral decisions it is not a question of the Hypericum Nummularium, the scientific name is not employed, another name was employed. Do you know St. John's wort ?

A. Yes, Sir, the ordinary St. John's wort.

Q. 19. Is not the Hypericum Nummularium designated sometimes by the name of St. John's wort ?

A. No, generally St. John's wort is asked for, it is 1556 St. John's wort, and the other is vulnerary.

Q. 20. And the ordinary St. John's wort, do you know it ?

A. Yes, Sir.

Q. 21. Have you any of it ?

A. Here is the fresh plant, I have brought a little of it dry, but there are no leaves.

Q. 22. This is St. John's wort ?

A. Yes, Hypericum Perforatum. The dry and the fresh plant.

1557

Q. 23. The scientific name of which is ?

A. Hypericum Perforatum.

(The fresh plant is marked Exhibit No. 7, and the dry plant Exhibit No. 8.)

Q. 24. Let us return, Sir, to the Hypericum Nummularium or vulnerary of the Chartreux. Do you know if this plant is found elsewhere than in the group of
1558 the Grande Chartreuse ?

A. But all the works that I know of—a large number of the works I know—it is pretended—they say that it grows in the Pyrenees and in the Vosges Alps, Pyrenees and Vosges.

Q. 25. Could you give us the works to which you make allusion ?

A. Here is "La Flore Française" of Gillet and Magne, page 93: "Hypericum Nummularium grows in summer in the mountains of the Vosges and of the
1559 Dauphiny."

(The work is annexed and marked Exhibit No 9.)

Here is the "Flore des Pyrénées" of Philippe, which comprehends absolutely only plants growing in the Pyrénées. At the 160th page, after the description, he says: "Abounds in the mountains, principally calcarious mountains and in the glacial regions." He
1560 does not specify the Pyrénées, but however it is the Flore des Pyrénées, consequently—

Mr. Pellerin: Objection, it is not proven that that applies to the hypericum nummularium.

The Witness: Ah, yes—

Mr. Pellerin: You have not cited it.

The Witness: "Its flowers are yellow, large, solitary, or in clusters pauciflores, corymbiflores, pedicel always shorter than the cup, cephales oblong, nearly

1561

obtuse, stamen nearly equivalent to the petals, capsules furnished with numerous little bands, seeds of an olive green cylindric, sub-attenuated at the end, finely alveoled, etc—"

Q. 26. What is the name, Sir? By what name does the author designate scientifically that plant of which you have just given the description?

A. Hypericum Nummularium.

(The work is annexed and marked Exhibit No. 10.) 1562

Q. 27. Have you still other works to cite to us?

A. "Plantes du Dauphiné," of Verlot. Hypericum Nummularium.

Q. 28. What page?

A. Page 69.—"Hypericum nummularium, grows in the fiissures of shaded rocks, in the group of the Grande Chartreuse, Fourvoirie, Bovinan, Le Collet, Bellefonds, La dent de Crolles, Le haut de Seuil.—Yellow flowers, July—August." 1563

(The work annexed and marked Exhibit No. 11.)

"La Flore Coloriée, de Correvon à l'usage du Touriste dans les montagnese la Suisse, de la Savoie, du Dauphiné, des Pyrénées."—Hypericum nummularium—

Q. 29. What page? 1564

A. Page 36,—Hypericum nummularium. It does not say where it grows. Now, in this work there is a figure of the Hypericum nummularium.

Mr. Guignier: I desire to remark that Mr. Barbancey indicates to the witness the page of the book.

The Witness: I thought it was necessary in the matter—

Mr. Bonnet: I wish to make the remark that

1565

I asked the witness what was the page, that the witness indicated the page 36 after Mr. Barbancey had leant over.

(The Witness): There is, in this work, a plate: hypericum nummularium, St. John's wort nummulaire, and some words written in English, I believe, which I cannot read because I do not know them. Here is "La Flore du Department des Hautes Pyrenées."

1566 Q. 30. Will you permit me, Sir? At the top of the page 35, which is relative—on which is given the figure of the hypericum nummularium, I read these two lines which you have omitted:

"Alpes Occidentales et Pyrenées—

A. I had not seen—

Q. 31. "in the rocky places and pasturages of the Alpine region."

A. "Alpes Occidentales and Pyrenées, in the rocky places and pasturages of the Alpine region."

1567 It is exact. I did not see—

(The work "Flore Coloriée," of Correvon is annexed and marked Exhibit No. 12.)

Now, here is "La Flore du Département des Hautes Pyrenées," by the Abbé Dulac.

Q. 32. What page?

A. Page 235: Hypericum nummularium, leaves yellowish underneath, orbiculaires, calcarious mountains,

1568 Pic du Midi, Gavarni, Marmoret, Léris de Pierrefitte at Luz—

(The work is deposed and annexed as Exhibit No. 13.)

Cross-examination by Mr. Guignier:

x-Q. 1. I will put this question to Mr. Baboin: Is he a Botanist?

A. I am evidently a Botanist, for all Pharmacists

1569

must know and do know botany. I have replaced Mr. Verne, I gave his lectures on medical matter during one year, and as my examinations—

x-Q. 2. Accordingto you, Pharmacists are Botanists?

A. Ah, in more or less considerable limitations, I do not wish to pose as an eminent and reputed Botanist. I know botany.

x-Q. 3. There are Attorneys who know a little botany, and who are not Botanists.

A. In my business I am obliged to know botany. 1570

x-Q. 4. However all Pharmacists are not Botanists?

A. Ah, no. But what do you mean by Botanist? That is what it is necessary to know. If you mean people that have a name— No, but any Pharmacist may call himself a Botanist, seeing that he studies it for three years at school, and there is not only pure botany, but lectures in botany.

x-Q. 5. You are not a professor of botany.

A. No.

x-Q. 6. Nor an expert in botanical matters? 1571

A. No.

x-Q. 7. Can you say were these plants come from, where they were gathered?

A. Ah, that—

Re-direct Examination by Me. Bonnet:

Re-d. Q. 1. Is it not the practice of a Pharmacist, in his profession, to deliver plants to clients?

A. All day long. 1572

Re-d. Q. 2. Must he not know the plants one from another?

A. Evidently.

Re-d. Q. 3. When you replaced the professor of Pharmacy at the Faculty, and professed in his place, did you not indicate to the pupils what were the characteristics of medicinal plants?

A. That is absolutely what I did, there is nothing else to be done in lectures on medical matters.

Re-d. Q. 4. Is not vulnerary or vulnerary of the

1573 Chartreux or hypericum nummularium a medicinal plant ?

A. That depends. It is a medicinal plant, but it is very little employed in pharmacy, and I admit that in a class on medical matter it is not referred to, because one is obliged to be restrictive.

Re-d. Q. 5. Do you sell hypericum nummularium ?

A. Yes, Sir, sometimes it is sold in Grenoble.

Re-d. Q. 6. You said just now— Here is the Ex-
1574 hibit No. 2. Has this plant reached maturity ?

A. Ah, no, it has not flowered.

RE-CROSS-EXAMINATION BY MR. GUIGNIER :

Re-x-Q. 1. Are the works annexed in this case by Mr. Baboin absolutely agreed as to the place of origin and the description of the plants ?

A. The description, yes. As to the place of origin you see that those that treat of the Pyrenées only
1575 speak of the Pyrenées. Now, there is Gillet & Magne, which is more general, which speaks of the Vosges.

Re-x-Q. 2. Are there differences in the descriptions?

A. No, no, you can control them. There are some which cite the Pyrenées and others which do not cite them. Gillet & Magne cite the Vosges, which are not cited in the others.

1576 INTERROGATORY OF MR. MARGARON (Third witness) BY MR. BONNET :

Q. 1. What is your name ?

A. Margaron.

Q. 2. Your christian name ?

A. Joseph.

Q. 3. Your age ?

A. 55 years.

Q. 4. Your residence ?

A. Saint Laurent du Pont.

1577

Q. 5. Your profession?

A. Wholesale wine merchant.

Q. 6. Have you always been a wine merchant?

A. No, Sir.

Q. 7. What did you do before?

A. I was employee of the Reverend Chartreux Fathers, at Fourvoirie, at the distillery.

Q. 8. From and up to what time?

A. From 1865 till 1902.

Q. 9. What did you do at the Chartreux Fathers'? 1578

A. I kept the books of the distillery, and besides I assisted at the reception of the herbs which I had classified by order and kind.

Q. 10. Good. Are you acquainted with the plants that were brought to the Chartreux Fathers?

A. Yes, Sir.

Q. 11. Among these plants was there one which is called la Vénérelle?

A. Yes, Sir.

Q. 12. Do you know where this plant grows? 1579

A. This plant grows on the heights, principally and chiefly in precipitous places, in the fissures of rocks, very difficult places. Even where there is most of it, it is almost inaccessible.

Q. 13. Have you gathered it sometimes?

A. Yes, Sir.

Q. 14. And where have you gathered it?

A. On the Grand Som.

Q. 15. Does the Grand Som belong to the State?

A. That is what I do not know, I am unacquainted. 1580

Q. 16. Is the place where you gathered la Vénérelle on the Grand Som, is this place easily accessible?

A. No, Sir, very difficult, extremely difficult even.

Q. 17. Can sheep go and graze in the places where la Vénérelle is to be found?

A. In the pasturages, they can, but where it is principally to be found sheep cannot go.

Q. 18. To your knowledge, has the gathering of aromatic plants ever been forbidden in the group of the Grande Chartreuse?

1581

A. No, Sir, not in the least.

Q. 19. Yourself, when you gathered it, were you prosecuted, were any observations made to you?

A. No observation has ever come to my mind, no reflection.

Q. 20. The plants that were brought to the Chartreux Fathers, do you know where they came from?

A. From different places.

Q. 21. Do you know them, these places?

1582 A. Yes, Sir.

Q. 22. Will you indicate some of them to me?

A. Among others, like la Vénérelle, at Saint Pierre d'Entremont, that is where it was mostly gathered formerly.

Q. 23. Are there, did it come from other places?

A. Yes, still from other places also.

Q. 24. When plants were received at the Convent, were they placed or were they classified according to the places from which they originated?

1583 A. No, Sir, they were classified by kinds without distinction of origin.

Q. 25. When plants were received from Chougnes, were they mixed or separated from the plants of la Correrie?

A. No, Sir, they were mixed by kinds with those of the Convent and its dependencies of la Correrie and Fourvoirie, without distinction, that is to say they were mixed, the same kinds were placed together.

Q. 26. Then in the same heap, were there plants of

1584 several origins?

A. No, Sir—Ah, in the same heap?

Q. 27. Yes?

A. Yes, yes, yes, there were several origins, yes, certainly.

Cross-examination by Mr. Guignier:

x-Q. 1. Can Mr. Margaron tell us how he knew that the plants came principally from Saint Pierre d'Entremont?

1585

A. Because, Sir, I knew the people that supplied them, and when I received them I knew that they came from Saint Pierre d'Entremont.

x-Q. 2. They told you that they had gathered at Saint Pierre d'Entremont, there or such other place ?

A. Yes, besides we knew well the persons.

x-Q. 3. Yes, but an individual of Saint Pierre d'Entremont may have gathered the plants at Saint Pierre de Chartreuse or on the property of the State, or on the property properly speaking of the Chartreux ?

1586

A. There is plenty of it round about Entremont, plenty round about Entremont, Savoy.

x-Q. 4. Among the sellers of these plants, there were some from Saint Pierre d'Entremont, were there also some from Saint Pierre de Chartreuse ?

A. Perhaps a few, but principally the greater part of the supplies came from Saint Pierre d'Entremont.

x-Q. 5. Can you tell me the price you paid per kilog ?

1587

A. Ah, Sir, that—

x-Q. 6. You did not know ?—Since you were the cashier.

A. I cannot.

x-Q. 7. Can you state the quantity ?

A. I cannot.

x-Q. 8. However you ought to tell the truth, since you have sworn to do so. Can you state the quantity ?

A. No, since I was the employee of the Chartreux, and I have no right to divulge what happened in the house.

1588

x-Q. 9. It is strange that you cannot state the quantity since you have sworn to tell the truth.—You have said that you have gathered, have you made gatherings as a workman or have you made gatherings to come yourself and bring them to the Chartreuse ?

A. I went and made them for account of these gentlemen, that is to say I took a day off to go and gather them.

x-Q. 10. At what epoch did you gather plants yourself ?

1589

A. In 1868.

x-Q. 11. In 1868?

A. Yes, Sir.

x-Q. 12. In the course of that year only?

A. Yes, Sir.

x-Q. 13. Have you known of a Prefectoral decision of 1900 which was relative to plants?

A. No, Sir.

x-Q. 14. Now, you are unable also to indicate the
1590 number of individuals who came and furnished these plants each year?

A. No, Sir, I know that there were a certain number, but it would be difficult to precise.

x-Q. 15. You cannot say because you think that you ought not to say?

MR. BONNET: I make an objection to the way in which the Interrogatory is conducted at this moment, and notably to the last demand formu-
1591 lated by Mr. Guignier. The witness did not say that he could not say it.

MR. GUIGNIER: Let him explain himself with regard to that.

A. I have not to say it.

x-Q. 16. You reply that you have not to say it, that is very well, I have your reply. Now, do you know the quantity of plants, or even the sellers: the persons who came and brought you plants, did they only bring
1592 vulnerary or did they bring other plants?

A. They brought also other plants.

x-Q. 17. And could you indicate the quantity of them, the number of kinds, the number of the kinds of plants?

A. I have not to say.

x-Q. 18. You could not say?

A. I have not to say.

1593

INTERROGATORY OF MR. JEAN CLAUDE VALENTIN (Fourth witness) BY MR. BONNET:

Q. 1. What is your name?

A. Valentin.

Q. 2. Your christian name?

A. Jean Claude.

Q. 3. Your age?

A. 56 years.

Q. 4. Your residence? 1594

A. Saint Laurent du Pont.

Q. 5. Your profession?

A. A former carpenter, at present a small merchant in liquors.

Q. 6. Have you been employed by the Chartreux Fathers?

A. During 31 years, in the first place as a servant, employee at the distillery, during one year, one year as servant at the Convent, putting the elixir of the Grande Chartreuse in bottles, and working sometimes 1595 in the garden. Afterwards I left to learn my trade, I returned there again in 1875, and remained 28 years as carpenter, in the beginning as an apprentice and then as a workman. I have been even to Italy in their service, which makes me 31 years' service.

Q. 7. Do you know la Vénérelle?

A. Yes, Sir.

Q. 8. Do you know to whom the plants were brought for the Chartreux Fathers?

A. Sir, I did not have to occupy myself with that, I 1596 gathered them when young, at the time I was a servant at the Convent.

Q. 9. Do you know Mr. Dejey?

A. I do not know him intimately.

Q. 10. Who was Mr. Dejey?

A. A congregational teacher.

Q. 11. Did he have anything to do with or for the Chartreux Fathers?

A. Yes, he was a representative, he had the plants

1597

gathered for the Chartreux Fathers, he bought them and resold them to the Chartreux Fathers.

Q. 12. Do you know where la Vénérelle grows?

A. Yes, Sir.

Q. 13. Is it easy to gather it?

A. Oh, no, for twice that I went to do so—I was young then intrepid, very daring, and notwithstanding my 56 years I would not let my soup be eaten by others—I affirm to you that I was obliged to have
1598 myself attached by a rope, and I remained in the most difficult places, those who held the cord for me helped me, and when on the brink of the precipice I let myself slide down, and I remounted a little later by force of my arms.

Q. 14. Is it serious to pretend that la Vénérelle cannot grow on the properties of private persons because the sheep eat it?

A. But, Sir, sheep cannot get hold of it. It may happen that it grows on the edge, the border of rocks,
1599 they may get a little piece when passing. And I would add that sheep are not particularly fond of it.

Q. 15. Are chamois fond of it?

A. Oh, if you wish to speak of the chamois, that is another thing. The chamois belongs to the race of the goat, it is gluttonous. They eat plants not by the roots but by the blossom.

Q. 16. Where are there especially chamois?

A. On the property of the State.

Q. 17. Does la Vénérelle, in these conditions, exist
1600 in sufficiently large quantities on the property of the State?

A. There is not a great deal, because the greater part of the property of the State is wooded, the chamois can take refuge there; then, the small unimportant parts that are not wooded, the chamois roam in, they may be seen in troups of 10, 12, I once saw 13.

Q. 18. Why does not one find chamois on the property of private individuals?

1601

A. Because they are cleared of trees, and the chamois have no places in which to hide.

Q. 19. Do you know Mr. Dondey ?

A. Oh, particularly, Sir,

Q. 20. Do you know why he left the Ponts et Chaussées ?

A. That, I cannot tell you, but you might address yourself to his chiefs who know better than I. If I knew anything I should not wish to tell you. You might address yourself to the last of his chiefs, who 1602 was the cause—he was not dismissed, but he was given to understand that he must go. His last chief told me so : Mr. Boiton, Road-Surveyor at Saint Marcellin.

Cross-examination by Mr. Guignier :

x-Q. 1. Mr. Valentin, you have told us that you were in the service of the Chartreux during 31 years ?

A. Yes, Sir.

x-Q. 2. Do you not receive at the present time a 1603 pension ?

A. I beg your pardon, there are—

x-Q. 3. Of how much ?

A. Of 500 francs.

x-Q. 4. You have told us that you sell liqueur, is it not the Tarragona ?

A. Precisely.

x-Q. 5. Since how long.

A. Since the month of July of last year.

x-Q. 6. When you gathered la Vénérelle, how much 1604 were you paid the kilog ?

A. I did not have to be paid for it, I was a servant.

x-Q. 7. You do not know what is the price of it ?

A. I did not have to occupy myself with that.

x-Q. 8. You do not know ?

A. No, I did not sell it, I was an employee, I did this work like any other that was commanded me.

x-Q. 9. Are you not a correspondent for a journal at Grenoble, and in such a capacity have you not made

1605

divers appreciations either as to the liqueur manufactured at Fourvoirie or as to the liqueur manufactured at Tarragona ?

A. I am correspondent occasionally of La République de l'Isère ; when I am attacked by a journal I defend myself ; I have never so to speak had to occupy myself with the liqueur.

x-Q. 10. You have never given appreciations on either one or the other of these liqueurs ?

1606 A. No, Sir.

x-Q. 11. How do you know the place from whence the vulnerary came ?

A. By having gathered it on the Grand Som.

x-Q. 12. On the Grand Som, is it a dependance of the property of the State ?

A. I do not know the boundaries, I know that a part belongs to the Hospices at Grenoble.

x-Q. 13. The property of the Chartreux, which belonged to them, did it not end close to the Grand

1607 Som, below ?

A. Oh, considerably below, very far from the Grand Som.

x-Q. 14. The pasturage mountains ?

A. Of Bovinan ? Ah, that must be in —

x-Q. 15. Not Bovinan, the —

A. The Collet de la Ruchere ?

x-Q. 16. Yes.

A. It is considerably below, it is not gathered there.

x-Q. 17. Well, on the property of the State, are

1608 there not plants, is there not some of this Vénérelle, and what is the quantity, parallelly with private properties ?

A. There is very little of it, because the forest properties, the forests of the State —

x-Q. 18. And in the parts not wooded ?

A. The parts non-wooded ? The greater part of those non-wooded do not belong to the State.

x-Q. 19. Now, the parts non-wooded, have they a surface equal to or superior to those of the properties of private individuals ?

1609

A. Oh, I do not know, I am not a land surveyer, I have not gone into the subject as regards the State.

x-Q. 20. Were you a cultivator or a carpenter when you were in the service of the Chartreux?

A. I was in the service of the Chartreux for nearly a year —

x-Q. 21. As a carpenter?

A. In 1867, I was at Fourvoirie, working at the bottling of liqueurs, for one year, at the Grande Chartreuse, I put the elixir in bottles, besides I occupied 1610
myself sometimes by working in the garden, I was a servant. Then, later on, eight years later, in 1875,—I had learned my trade, to work — I have worked in different workshops, at Voiron, at Grenoble, at different places—I again entered the service of the Chartreux Fathers as carpenter, for 8 years as a workman, then for 20 years as foreman, having sometimes 4, 6, up to 10 workmen.

x-Q. 22. With regard to Mr. Dondey, you emphasize very much in saying that he was dismissed from the 1611
administration?

A. It seems to me that Mr. Dondey could enlighten you better than I.

x-Q. 23. I ask you if you know—

A. I have not to examine into the acts of Mr. Dondey.

x-Q. 24. A question has been put to you—

A. I have been a — Mr. Boiton told me that he had got rid of him, and that it was none too soon. You can address yourself to Mr. , the 1612
predecessor of Mr. Boiton, his predecessor is Mr. now under — Mr. Dondey left the administration while under the orders of Mr. Boiton, now road surveyer at Saint Marcellin.

x-Q. 25. Personally, then, you do not know anything, in short?

A. I have never had to examine into his acts, I have not had to watch him.

x-Q. 26. It is because you have been told it?

A. Because everybody said it. Public rumor says

1613

that Mr. Dondey was not dismissed, but that he was given to understand that he must give in his resignation.

x-Q. 27. Personally you know nothing ?

A. No, I know Mr. Dondey, in point of view of honesty I have nothing to reproach him with.

1614

INTERROGATORY OF MR. JEAN REY (Fifth witness) BY MR. BONNET :

Q. 1. What is your name ?

A. Rey.

Q. 2. What is your christain name ?

A. Jean.

Q. 3. What is your age ?

A. 28 years.

1615 Q. 4. Where is your residence ?

A. Saint Pierre d'Entremont, Savoy, Hamlet of Saint Meme.

Q. 5. Are you related to the Abbé Rey ?

A. No, Sir.

Q. 6. Have you gathered plants ?

A. Yes, Sir.

Q. 7. Did you gather them for account of the Chartreux Fathers ?

A. Yes, Sir.

1616 Q. 8. To whom did you sell the plants ?

A. To Mr. Dejey.

Q. 9. Have you gathered la Vénérelle ?

A. Yes, Sir.

Q. 10. Is it easy to gather ?

A. No, Sir.

Q. 11. Where did you gather la Vénérelle ?

A. Among the rocks, the steeps, among the crags.

Q. 12. In what place, on what properties ?

A. On our properties, Sir.

Q. 13. Your own ?

1617

A. Yes, Sir.

Q. 14. Have you not gathered it elsewhere?

A. Yes, Sir.

Q. 15. Where?

A. At Mr. Marcieux's, at Mr. Camand's, in the parishes.

Q. 16. Where did you gather most of it?

A. On our own places, Sir, on our properties.

Q. 17. Why?

A. Because there is more of it, Sir. 1618

Q. 18. Did the Forest Keepers molest you when you gathered la Vénérelle?

A. No, Sir.

Q. 19. Is it true that sheep eat la Vénérelle?

A. No, no, Sir, they eat it, but in places where there are large quantities of it, they cannot get there, Sir.

MR. BONNET: I thank you.

CROSS-EXAMINATION BY MR. GUIGNIER: 1619

x-Q. 1. Did you go on the properties of the State to gather la Vénérelle?

A. No, Sir.

x-Q. 2. You do not know, then, that there is more on the property of the State than on the property of private individuals?

A. No, Sir.

x-Q. 3. You do not know whether there is more on the domain of the State than on private property? 1620

A. No, Sir.

x-Q. 4. You told us just now that you gathered the plants on your property, how is it called, this property?

A. The Alpette, Sir.

x-Q. 5. Ah, it is the Alpette. You are a communist, and are you numerous?

A. Yes, Sir.

x-Q. 6. How many, about?

A. About forty.

1621

x-Q. 7. Is it you or your father that is the proprietor?

A. It is my father, and also my father-in-law and my uncle.

x-Q. 8. Has your father deposed or is he to depose as a witness?

A. No, Sir.

Mr. Bonnet.—Objection.

1622

x-Q. 9. You cannot tell me what is the area of the Alpette, the surface?

A. Ah, no, Sir, I cannot do so, I do not concern myself with that.

x-Q. 10. You do not know either what is the area of the property of Mr. de Marcieux?

A. No, Sir.

x-Q. 11. Nor that of Mr. Camand?

A. No, Sir.

1623 x-Q. 12. They are adjacent to the Alpette?

A. Yes, Sir, they are next to it.

x-Q. 13. Do you know the Haut du Seuil?

A. Yes, Sir, I know it.

x-Q. 14. Have you gathered plants on it, on the Haut du Seuil?

A. Yes, Sir, on the parish parts.

x-Q. 15. There are portions of it which belong to parishes, at the Haut du Seuil?

A. Yes, Sir.

1624 x-Q. 16. And to whom do the others belong, you do not know?

A. No, Sir.

x-Q. 17. When you sold plants to the Chartreux, can you tell us what was the price?

A. Ah, Sir, it was what was agreed with Mr. Dejey.

x-Q. 18. How much were you paid the kilog?

A. Ah, Sir, more or less.

x-Q. 19. About?

A. One does not put that very well in his head.

x-Q. 20. Was it a large profit for you each year?

1625

A. More or less, Sir.

x-Q. 21. You cannot give an approximative figure?

A. No, Sir.

x-Q. 22. Can you not tell me if you may have seen plants resembling la Vénérelle, and which were not?

A. No, Sir, that—

x-Q. 23. You do not know whether there are real Vénérelle plants and others that are imitations?

A. I know la Vénérelle.

x-Q. 24. You do not know whether there is a kind 1626
which is different?

A. I do not know, Sir.

RE-DIRECT EXAMINATION BY MR. BONNET:

Re-d. Q. 1. Have no accidents ever arrived to persons when gathering la Vénérelle?

A. Yes, Sir, my uncle fell over the rocks and was killed.

Re-d. Q. 2. He was killed? 1627

A. Yes.

RE-CROSS-EXAMINATION BY MR. GUIGNIER:

Re-x-Q. 1. What was his name?

A. Hughes Rey.

Re-x-Q. 2. And with regard to this accident, do you not remember whether Mr. Hughes Rey accompanied a tourist when the accident happened?

A. Ah, no, Sir. 1628

RE-RE-DIRECT EXAMINATION BY MR. BONNET:

Re-re-d. Q. 1. What was your uncle doing when he was killed?

A. He was gathering la Vénérelle, he had a sack of it, a sack of 8 or 10 kilogs, about, I cannot tell—

1629

RE-RE-CROSS-EXAMINATION BY MR. GUIGNIER :

Re-re-x-Q. 1. Did not the Chartreux Fathers in the course of last year, have you requested to gather la Vénérelle for them ?

A. Yes, Sir.

Re-re-x-Q. 2. Last year.

A. Yes, Sir.

Re-re-x-Q. 3. Did they request you to do so direct
1630 or by the intermediary of someone else ?

A. By an intermediary, Sir.

Re-re-x-Q. 4. Of whom ?

A. Of Mr. Verdant.

Re-re-x-Q. 5. Then the Chartreux Fathers had you requested to gather plants in the group by the intermediary of Mr. Verdant ?

A. Yes.

Re-re-x-Q. 6. Last year ?

A. Last year.

1631 Re-re-x-Q. 7. And you sent them some ?

A. Yes, Sir.

RE-RE-RE-DIRECT EXAMINATION BY MR. BONNET :

Re-re-re-d. Q. 1. Did you not, last year, bring some Vénérelle to Mr. Dejey ?

A. Yes, Sir, yes, Sir.

MR. BONNET. I thank you.

1632

INTERROGATORY OF MR. ADOLPHE REY (Sixth witness) by MR. BARBANCEY :

Q. 1. What is your name ?

A. Rey.

Q. 2. Your christian name ?

A. Adolphe.

Q. 3. Your age ?

A. 32 years.

Q. 4. Your residence ?

1633

A. Saint Pierre d'Entremont, Canton of the Echelles, Savoy.

Q. 5. What is your profession?

A. A cultivator.

Q. 6. Have you gathered aromatic plants?

A. Yes, Sir.

Q. 7. For account of whom?

A. I gathered them, I gathered them * * * I sold them when I gathered them to my father-in-law, who was a florist, as he gathered many kinds of plants, 1634 a large quantity, I know that he sold them to Mr. Dejey, who was the agent of the Chartreux Fathers.

Q. 8. Have you gathered notably a plant which is called la Vénérelle?

A. Yes, Sir.

Q. 9. At what season did you gather la Vénérelle?

A. Oh, thereabouts, in the month of August or September, it is not ready before.

Q. 10. Where does this plant grow?

A. It grows principally on our property, on our 1635 mountain, ours.

Q. 11. What is the name of your mountain?

A. We fellows, we call it the Alpette.

Q. 12. At what place on the mountain does it grow?

A. Yes, it grows in very precipitous places, particularly at the top, in stony places, the fissures of rocks, very dangerous even, we risk great perils. As a proof, about 13 or 14 years ago, my comrade, in gathering was killed.

Q. 13. In gathering what? 1636

A. In gathering la Vénérelle.

Q. 14. How do you know that it was in gathering la Vénérelle?

A. I know it very well, he had nearly a sack full of it upon him.

Q. 15. To whom does the place belong where this accident occurred?

A. To we fellows, proprietors.

Q. 16. Do you know what the Chartreux did with la Vénérelle?

1637

A. Ah, Sir, did they make liqueurs with it, cataplasms, that, I did not interest myself with that.

Q. 17. You do not know?

A. No, Sir.

Q. 18. Do you gather plants elsewhere than on your property?

A. Yes, Sir.

Q. 19. At what place?

A. I have gathered it on the mountain of Mr. de
1638 Marcieux, that of Mr. Camand, which is also neighbouring one which is a little farther off, which belongs to the parish of Barraud.

Q. 20. You could freely gather the plants? Have you ever been forbidden to gather la Vénérelle on the mountains that belong to parishes?

A. No, Sir.

Q. 21. Do you know the Forest Keepers?

A. Two, of our vicinity.

Q. 22. You have had occasion to see them pretty
1639 regularly?

A. On the mountain, never.

Q. 23. Where have you seen them?

A. In the country.

Q. 24. Did they ever tell you that it was forbidden to gather la Vénérelle?

A. No, Sir.

Q. 25. Did they ever prevent you from gathering this plant or other plants?

A. No, Sir.

1640 Q. 26. Where did you gather the most Vénérelle?

A. Principally on our mountain, which is called the Alpette.

Q. 27. Why is it there that most is gathered?

A. Because it is a place where most of it grows.

Q. 28. Is it serious to pretend that la Vénérelle cannot be gathered on your properties, for example, because sheep eat it as soon as it grows?

A. Oh, to gather it on the mountains where it is gathered, it is very difficult for sheep to penetrate, since we fellows, even—myself personally, I have cut

1641

little fir trees leaning against the rocks to ascend. One must be almost like the chamois to go in these places ?

Cross-examination by Mr. Guignier ;

x-Q. 1. Have you been in the service of the Chartreux, and at what time ?

A. How, Sir ?

x-Q. 2. I ask you if you have ever been in the service of the Chartreux, and at what time ? 1642

A. No, Sir. I have never been there. I don't even know them.

x-Q. 3. Now, can you tell us what was the revenue you may have made annually by gathering plants for the Chartreux ?

A. That, Sir, the revenue, that depends on the interested party how the man is interested ?

x-Q. 4. What is the sum you were able to realize each year from this source ?

A. Some years for 100 francs, some years for 150 1643 francs, some years less, that depends upon how one goes to gather it.

x-Q. 5. Was it a figure of about 50 or 100 francs ?

A. Nothing is certain.

Mr. Barbancey : I have intentionally allowed the question to be put, but I would observe that it has no bearing on the case in cause.

x-Q. 6. Have you gathered plants, vulnerary, on the 1644 Haut du Seuil ?

A. Yes, Sir.

x-Q. 7. Do you know if those plants which you sold to Mr. Dejey—— Is the Haut du Seuil a property of the State ?

A. No, Sir.

x-Q. 8. Of whom is it the property ?

A. It belongs to Mr. de Marcieux.

x-Q. 9. Totally or in part ?

A. Ah, that——

1645

x-Q. 10. Do you know whether those plants which you sold to Mr. Dejey were for the Chartreux ?

A. I, I did not sell them—I sold them to my father-in-law.

x-Q. 11. Whose name was ?

A. Tardy.

x-Q. 12. Who sold them to Mr. Dejey ?

A. Yes.

x-Q. 13. And you do not know what Mr. Dejey did
1646 with them ?

A. Ah, that, no.

x-Q. 14. You have said that la Vénérelle grew principally on your mountain, your own. Have you gathered any elsewhere ?

A. Yes, Sir.

x-Q. 15. And where ?

A. On the mountain of Mr. Camand, and that of the parishes.

x-Q. 16. You have never been on the property of the
1647 State ?

A. Yes, Sir, if I were to say that I have never been there I should tell a lie. Once I took it into my head to go there with a comrade, I gathered very little of it, and I was obliged to gather wild leaves when returning and to put them in my sack to pass through the village for fear that my neighbours would joke me.

x-Q. 17. That they would ridicule you ?

A. Yes.

x-Q. 18. Could you cite other private properties to
1648 me than those you have already mentioned where la Vénérelle can be gathered ?

A. There is yet the mount Grenier, the Alpette of Chapareillan, I have never been there, but I know that it can be gathered there, but I have never been there.

x-Q. 19. Do you know if it can be gathered on the Grand Som ?

A. I have never been there, I cannot say.

x-Q. 20. If sheep found la Vénérelle in a plain, if it grew there, would they eat it ?

1649

A. Oh, if it grew there they would eat it certainly, but it does not grow in the plain.

x-Q. 21. I mean on a flat surface ?

A. I understand, yes, but on our mountain meadows it does not grow.

Re-direct Examination by Mr. Barbancey :

Re-d. Q. 1. If I understand aright, you said just now to Mr. Guignier that the idea came to you one 1650
day to go and search for la Vénérelle on the property of the State, and that for fear that people make fun of you, you were obliged to fill your sack with leaves of any kind, for the reason that you did not find any of it ?

A. Yes, Sir.

Re-d. Q. 2. Did you cover a large extent of ground on the property of the State ?

A. Yes, I worked all day, a pretty large amount.

Re-d. Q. 3. And all day long you did not find any Vénérelle ? 1651

A. Oh, perhaps a kilog green, that does not make a full day.

Re-d. Q. 4. Did you not have the impression that it was abundant ?

A. I thought so certainly, but I made a mistake.

Re-d. Q. 5. Have you been prevented from going to gather plants on the property of the State ?

A. No, Sir.

Re-d. Q. 6. Have you ever known that in virtue of a decision the Forest Keepers could prevent you from 1652
gathering la Vénérelle ?

A. I have never perceived anything, Sir.

Re-d. Q. 7. I cannot interrogate all the people of your country, but I wish however to ask you if to your knowledge the gathering of aromatic plants in your country has been forbidden ?

A. It has never been forbidden to the inhabitants of my village, nor the neighbouring ones, to gather this flower.

Re-d. Q. 8. You have not been interdicted of course

1661

Q. 16. Is it easy to gather la Vénérelle ?

A. It is very—Not very commodious, Sir, it is very dangerous.

Q. 17. Very dangerous, in what way ?

A. Because I have one of my neighbors, who is Rey, he fell dead from a precipitous rock.

Q. 18. But how do you know that he was killed while gathering la Vénérelle ?

A. Because I went up to bring him down, he had his
1662 sack, he was lying on his sack of Vénérelle, he died there.

MR. PELLERIN : I make objection to that question as having no reference to the case in cause.

Q. 19. To whom does the place belong where this accident occurred ?

A. To us, on our property.

1663

MR. BARBANCEY : To this I will make the following remark :

We attach no special importance, as far as we are concerned, to the plant which we call la Vénérelle, we do not know for what the Chartreux Fathers utilized it. If in our interrogatories we have been led to put multiple questions, it is to reply to the assertion of our adversaries who have pretended that certain
1664 plants were only to be found in the part of the group which belongs to the State, that notably la Vénérelle was to be found but exclusively in that particular part, and that if it might be found on the property of private individuals, it was in places where sheep—which are very fond of this plant—ate it.

MR. PELLERIN : I make objection, as not being what was said by the witness.

MR. BARBANCEY : I continue : I am therefore obliged,—since the witnesses of the adversary have pretended that this plant, on the

1665

property of private individuals, where sheep pastured, was eaten by sheep—to establish, as far as I am able, that this plant is very difficult of access to sheep. I continue my interrogatory.

Mr. Pellerin : I maintain my objection.

Q. 20. Do you know what the Chartreux did with the Vénérelle which they bought ?

A. No, Sir, I did not trouble myself with what they 1666
did with it.

Q. 21. Did you gather other kinds of plants for account of the Chartreux ?

A. No, Sir, I only know la Vénérelle.

Q. 22. Where did you gather especially la Vénérelle ?

A. On the high summits of the mountains, of the mountains, in precipitous places, very dangerous, in the crags, in the fissures of rocks.

Q. 23. But to whom do these places of which you 1667
speak belong ?

A. To ourselves, Sir.

Q. 24. To yourselves personally ?

A. Yes, Sir.

Q. 25. Have you not gathered it elsewhere ?

A. I have gathered it on the parish properties, on Mr. de Marcieux's, on Mr. Camand's properties.

Q. 26. Do you know any Forest Keepers ?

A. Yes, Sir.

Q. 27. Have they told you that the gathering of the 1668
plants was forbidden ?

A. No, Sir.

Q. 28. Have they ever prevented you from gathering plants ?

A. No, Sir.

Q. 29. Does la Vénérelle grow in large or small quantities on your properties ?

A. In large quantities on our mountains.

Q. 30. Where do you gather most of it ?

A. On our property.

1669

Q. 31. Why do you gather most of it there ?

A. Because it is the place where there is most of it. It is the ground which is propitious.

Q. 32. Is it serious to pretend that la Vénérelle cannot be gathered on the property of private individuals because sheep eat it as fast as it grows ?

A. No, Sir, they cannot eat it, because it is in too difficult places, they would fall in these places.

1670 MR. BARBANCEY (to Mr. Bachrich) : Pass me the last interrogatory of Mr. Dondey,to reply to the objection of Mr. Pellerin. Here is the first passage. Interrogatory of Mr. Dondey, of the 22 and 26 April, 1906. Interrogatory made by Mr. Kelly. I will indicate to you the passages. They are Qs. 64–71, 88.

Consequently the observation I made in reply to the objection of Mr. Pellerin was perfectly founded.

1671 MR. PELLERIN : I interpret it differently.

MR. BARBANCEY : I stand by the testimony of Mr. Dondey, witness for Mr. Kelly. I have finished.

CROSS-EXAMINATION BY MR. GUIGNIER :

x-Q. 1. The witness has told us that vulnerary grew in large quantities on his properties, could he tell us—Have you gathered—Has the witness gathered vul-

1672 nerary on the properties of the State ?

A. No, Sir.

x-Q. 2. Then you cannot indicate what is the proportion, the relation there is, in point of view of the productiveness of this plant with you and with the State, on the property of the State ?

A. No.

MR. BARBANCEY : Objection.

x-Q. 3. Why do you say then : in great quantity with you ?

1673

A. In great quantity because the country is—the country is—

x-Q. 4. But you cannot indicate the quantity there is on the property of the State, because you have not been on that property.

A. No, Sir.

First Session of Friday, June 8, 1906.

1674 The Session is opened at 10 A. M. at the Consulate of the United States, at Grenoble. Are present:

Mr. C. P. H. Nason, Consul of the United States;

Mr. Barbancey, Secretary to Mr. Bonnet, Counsel for the plaintiff, assisted by Mr. Bachrich, Stenographer;

Mr. Guignier, Attorney at Grenoble, representing Mr. Edmond Kelly, Counsel for the defendant, assisted by Mr. Pellerin, Secretary to Mr. Kelly, and by Mr. Dondey, Expert.

1675 Interrogatory of Mr. Pierre Charles Lauris by Mr. Barbancey.

Q. 1. Will you state to me your name?

A. Pierre Charles Lauris.

Q. 2. Your age?

A. 40 years, I was born in 1866.

Q. 3. Your residence?

A. Grenoble, 4 Rue Fantin Latour.

Q. 4. What is your profession?

1676 A. Sub-Director of the Geological Laboratory of the Faculty of Sciences of the University, and collaborator in the Service of the Geological Map of France, Ministry of Public Works.

Q. 5. Will you mention to me your works?

A. After having studied, like all those who destine themselves to natural sciences, botany, zoology and geology, to prepare for degrees, I made a specialty of the study of geology, and I have published scientific works on the Dauphiny Alps. It is not necessary, probably, to mention the titles.

1677

Q. 6. Have you had occasion to work in the group of the Grande Chartreuse?

A. I have known for a long time the group of the Grand Chartreuse, in the first place through having accompanied my father, who was the principal geological explorer of that region, and since,—and particularly these latter years,—I have had occasion to return there for the revision of the outlines of the geological map, Grenoble leaf, this leaf being exhausted.

1678 Q. 7. What brings about the fixing of the boundaries of a group scientifically?

A. A subdivision of a mountainous region or a chain of mountains presenting a certain uniformity as a whole in its character, and defined by important natural depressions, is called a group.

I should mention that this definition acquires a particular distinctness in our region, owing to the disposition of the ground zones. The ground, owing to the crumpling it has suffered, is disposed in parallel
1679 bands with the general direction of the Alps, that is to say roughly North-South, and in such a way that when one goes from West to East, one has to cross zones each of which is constituted of the same kind of ground. We find one zone of calcarious chains, which Charles Lauris has named subalpine zone, then after the deep trench of the Grésivaudan a zone of cristalline, and again a zone of calcair.

We have thus zones characterized by continued crumplings over a great length, about parallel to the
1680 general direction of the Alps.

These zones, as I have said, are subdivided into fragments by transversal cuts which are here very wide and very deep. They are principally the cut of Vauvarègues, lake of Annecy, then the cut Montmelian-Chambéry, then the cut Grenoble-Voreppe.

Q. 8. If you will be so kind as to produce in support of your demonstration the geological map, and give your explanations on the map itself?

Mr. Pellerin: It will be annexed.

1681

A. Here to begin with is a geological map of the region; here is the general direction of the crumplings which is translatable by the direction of the steeps: you see them on this map.

The map produced by the witness is annexed and marked Exhibit No. 14.

Q. 9. Will you indicate from one point to another, for example, two localities?

1682

A. For example, here is the fold; I take the fold Grenier-Dent de Crolles, from the gap of Chambéry: there is Grenier and here is the Dent de Crolles, you see this steep. Also you see here a line of steeps, the line of Corbel which is continued like this—

Q. 10. Which goes from what point to what point?

A. Here, I will request permission to take the geological map, which is on a larger scale, since it is established on the map of the Staff. This leaflet is exhausted. I have taken rather an effaced copy.

1683

Q. 12. Can you annex it to your deposition?

A. If you like, at your service.

The geological map produced by the witness is annexed and marked Exhibit No. 15.

You have, from the border of the leaf, what we call an antipinal, that is to say, an arch which you will find in the mountains of Corbel, which you see there—which you will find again at foot, to the south of Grande Chartreuse which you follow south of Gniers 1684
mort towards Valombré, and which, joined to other folds are continued, a little drawn out—these folds are in general a little drawn out—and terminate to the right of the Isère.

Q. 12. Consequently at the angle of the gap of Chambéry?

A. At the gap of Chambéry.

Q. 13. Could you indicate to me another fold which follows the same direction, and which has the same extent?

1685

A. There is a fold. Let us take the fold that starts from the Col du Frêne, it is outside of the limits of this leaf. It is seen very distinctly on the territory of Entremont le Vieux, crosses the Guiers vif, is severed by the Guiers vif, then by the Guiers mort and emerges, opened by the erosion, in the torrent of the Manival, where it is lost under the alluvions of the Isère.

In point of view of the direction of these folds, it has been established very well for some years—at the out-
1686 set only fragmentary studies were made—the continuity of the folds of the environs of Chambéry have been very well established, and of Entremont with the folds of the environs of Grenoble. It has been possible to link all these in such manner that save in a few places the continuity of the principal ranges has been found.

Q. 14. What are the natural limits of the Grande Chartreuse, from a geo-physical point of view?

A. The group of the Grande Chartreuse is an entity
1687 well known to all geographers and all geologists. Its limits, longitudinally, parallelly to the direction of the chain are:—to the west, the valley of the Cout, from the gap of Chambéry which is continued by the table-land of Bernin, the valley of Saint Laurent du Pont, the Col de la Placette, as far as Voreppe.—The Eastern limit is the Valley of the Grésivaudan.

On the other hand, to the North and to the South, the limits are those great gaps of which I have just spoken: Montmélian, Chambéry, Grenoble, Voreppe,
1688 which are homologous one to another.

Q. 15. Have the natural limits which you have just indicated always separated this group from its neighbours?

A. Ah, these limits have been indicated from the time of the crumpling, for they correspond in certain particularities with this crumpling. Certainly at the time of the striction of the chain, they were limited, but these limits have been enlarged and deepened by the working of the waters and of the glaciers, so that formerly the distinction, the separation which

1689

at the present day is made on the level between the group of the Grande Chartreuse, the group of the Bauges and the group of Vercors was not so deep—These two groups have a part—the net-works of the Chartreuse extend to these two groups, on the North on one side, on the South on the other, and the constitution of these two groups resembles greatly that of the Grande Chartreuse.

Q. 16. Could you indicate to us an example, by indicating, for example, starting from the group of the 1690
Grande Chartreuse, streaks which are prolonged beyond the Isère, as regards the nature of the ground?

MR. PELLERIN: I make objection, leading question.

MR. BARBANCEY: I maintain my question, if you can indicate to me on the map that beyond the valley of the Isère certain grounds of the group of the Grande Chartreuse are prolongated.

1691

A. Certain grounds of the group of the Grande Chartreuse are found again to the North in the group of the Bauges, and to the South in the group of the Vercors. The principal constitnant soils of these three groups are: the jurassic superior, the cretaceous and the tertiary medium or myocen, bed of the molasse.

Well, I take, for example, the molassic band which limits exteriorly the group of the Grande Chartreuse, it is found again to the South of the gap of the Isère of 1692
Veurey by Montaud, the Ecouges, etc.: The ensemble of these cretaceous soils is found again almost the same to the south of the Isère as well as to the north.

Also, the chalk group, the cretaceous superior, are prolongated to the south as well as the north. There is a striking example of this prologation, it is the beds of cement of the Porte de France, famed for their exploitation. The same ensemble of bands is found to the north of the gap of the Isère, in the Mount Jalla, and to the south in the hill of Comboire.

1693 Q. 17. Can you, on the geological map, which you have just produced, and which indicates the formations of the soils and their continuity, indicate to us what the different colors of this map represent ?

A. I thought I had already done so ; on a geological map the level of a ground at the surface is marked by a tint, every time it is not masked by notable superficial deposits. Thus, on this map, the yellow, the yellow bordered by a dark red band represents the
1694 calcaires of the Porte de France, in other words the most elevated layers of the jurassic beds which constitute a first calcareous bar. The greenish ground which comes behind is the base of the cretaceous, it is the ground notably of the dale of Engouvent. They are marly grounds, in which plateaus and dells more particularly have been hollowed out. Here, for example, this immense band which you follow from one end to the other there—The red brown grounds, which we call urgoni-
1695 ens, are calcareous groups which constitute almost the totality of our great ridges, whether in Chartreuse, or in Vercors. Between the two, there is a secondary ridge which is here, in this palish green, which acquires, however, considerable importance in the Grande Sûre : they are calcareous and are called du Fontanile, Vordisien or du Fontanile and Urgonien lime-stone—this is moreover a faulty denomination—which was formerly called Sassenage lime-stone.

Q. 18. Is there or is there not a difference between
1696 the soil of two points the under soil of which differs ?

A. When the soil of a point is formed by rock flush in place, or again when it is constituted by the decomposition of this rock on the spot, the constitution of the under soil has the greatest influence on the constitution of the soil, which varies about as it varies. On the contrary, if there is at the surface of the soil superficial deposits rather thick, naturally the soil is not affected by the constitution of the under soil. It is the case in our regions, there where the soil is formed by glacial deposits, which are very extensive. Follow-

1697

ing this transportation by the glaciers, a great variety of rocks have been mixed, and everywhere where glacial deposits exist such creates a certain uniformity of the soil. It is the case in a great number of valleys of the Chartreuse, where the glacial deposits are very extensive, for example on the two sides of the Guiers vif, certain points of the Chartreuse, Saint Pierre, etc.

Q. 19. In point of view of botany, what consequence does that bring you to?

1698 A. I have told you that I am not especially a botanist: I consider your question from the point of view of the relations of geology and botany.

Q. 20. Exactly.

A. From this point of view, the fact that the same soils are found in all the length of the group, that on a crossing perpendicularly to the length are found again the levels of the same grounds a series of times, and that, on the other hand, the crumplings being at a height nearly comparable have carried these grounds to altitudes equally comparable, it results that the geo- 1699 logical constitution does not oppose the same plants being refound in all parts of the group at their altitude and exposition,—be it understood at their proper exposition.

MR. PELLERIN: I make objection to the question in the way it has been posed by Mr. Barbancey, the witness not being an expert botanist.

1700 MR. BARBANCEY: I make the remark that the witness, Mr. Lauris, has simply deposed on the question of the relation of botany to geology. I would beg of you to more clearly precise the meaning of your objection.

MR. PELLERIN: I make objection to the question in the way it has been posed.

MR. BARBANCEY: Will you indicate to me the reason, if you please?

MR. PELLERIN: The reason why I make objection?

1701

Mr. Barbancy: The question is this: in point of view of botany, what consequences does it lead to?

Mr. Pellerin: The gentleman is not a botanist.

Q. 21. In point of view of botany,—I repose my question,—in its relations to geology, what consequences does it lead to?

1702

Mr. Pellerin: I make no objection.

A. My reply will not change: I have commenced by declaring that I spoke solely from the point of view of the consequences that the nature or the structure of the soil carries for vegetation.

Q. 22. Do you maintain the preceding reply you made me?

A. Yes.

1703 Q. 23. To my question so put?

A. I will make it over again if you desire.

Q. 24. You do not see the use of making it over again?

A. No.

Q. 25. You maintain it?

A. Yes.

Q. 26. A witness for our opponent, Mr. Dondey, has pretended that the group of the Grande Chartreuse was limited in the following manner,—and I will read

1704 part of his interrogatory of the 16th of March, from question 6 to question 11, and of the 25th of April, from question 4 to question 24: (Defendant's Record)

Well, Sir, I would request you to say if it is exact that the group of the Grande Chartreuse is bounded in the manner indicated by Mr. Dondey in the interrogatories which I have just read?

A. Mr. Dondey, in his replies, has indicated as I have the oriental, meridional and occidental boundaries in part. There is disagreement between us as to the

1705

northern boundary of the group. Mr. Dondey takes for this boundary that of the two departments, which was, as he says, that of the two States. His opinion comes, in fact, to taking as preponderant lines, in geological physics, those which played a role as political boundaries. That is a point of view evidently which, in scientific questions, we are not accustomed to, and one does not see very well in what the accidents of temporary politics re-echo so strongly on things of nature and of the soil. I do not at all pretend 1706 that this cut of the Guiers vif, this transversal cut, may not be an interesting detail in the structure of the group of the Chartreuse, it is, like the cut of the Guiers mort, and, nearer to us, the cut of the Vence, but as for taking it for the boundary of the Chartreuse, I do not remember ever having seen that in scientific works. Mr. Dondey, then, finds himself led to this detail, he follows his boundary of the State towards— and he is led to cut off from the group a median fragment from the serie of the heights (plateaus) of Mount 1707 Grenier, he extirpates from the group this fragment and leaves it to the Grenier and the Alpette on the other side : It is quite diverting.

Lower down, down the river, we have the country of Entremont. I am not competent in historical geography, but it seems to me that I remember that the unity of ensemble of Saint Pierre d'Entremont has never been completely disregarded, and that many contests have been the echo of this idea that from both sides of the Guiers it was the same thing. 1708

At the present day we are no longer impressed by political boundaries, no one has the idea not to see from both sides of the Guiers the same country and the same names, from both sides, of Entremont, translates very well this impression.

Q. 27. What do you understand, in the Dauphiny, by the word " sangle " ?

A. Sangle ?—I think, by the use we make of it, that " sangle " designates a cornice partly grassy, some-

1709

times having forest trees among the steeps and rocks. It is a term which is almost special to the group of the Chartreuse.

CROSS-EXAMINATION BY MR. GUIGNIER :

x-Q. 1. You have said, Mr. Lauris, that you were a geologist, and that you have done a little botany. You have testified to the relations between geology and
1710 botany ?

A. Exactly.

x-Q. 2. Well, does not the ground have an influence on the nature of the plants ?

A. Not have an influence ? Yes, the ground may have an influence on the nature of the plants, I have explained it in one of the questions that have been put to me.

x-Q. 3. It has seemed to me that you have said that it was not extra natural that the same plants were to
1711 be found in one part, and the same in another ?

A. Certainly.

x-Q. 4. But you have not affirmed that such would forcibly result from the same nature of the soil in the two parts ?

MR. BARBANCEY : I make objection : I would beg of you to have reread the passage of the deposition of the witness rather than to indicate—

THE WITNESS : I will complete it, if need be.

1712

MR. BARBANCEY : The witness not having said that in the terms in which it is indicated.

MR. GUIGNIER : It seems to me that Mr. Lauris has said that it was not extraordinary to find the same plants in the—on the surface of the same grounds, but I did not understand by that, that it was meant that it was the result of the same nature of soil.

MR. BARBANCEY (to the stenographer) : Will you refer to the passage of which it is question.

1713

(The stenographer rereads the questions and answers Nos. 19 and 20 of the Direct Examination.)

x-Q. 5. I add this question : does not the soil have an influence on the nature of the plants ?

A. I have replied in another part of my deposition the soil has an influence on the nature of the plants every time that the subsoil is not masked by sulerficial deposits.

1714

x-Q. 6. In supposing that the soil of two different places is identical, would there not be a difference between the nature of the plants owing to the exposition to the north or to the south ?

A. We are falling into delicate questions of physiological botany, as to which I confess that I am not competent.

MR. BARBANCEY : I make objection to that question.

1715

INTERROGATORY OF MR. GABRIEL VILLARD (Second witness) BY MR. BARBANCEY :

Q. 1. What is your name, Sir ?

A. Villard, Gabriel.

Q. 2. Your age ?

A. 40 years.

1716

Q. 3. Your profession ?

A. Chemist and druggist.

Q. 4. Your residence ?

A. Rue Bayard, 2.

Q. 5. Do you know a plant which in your country is commonly called Vénérelle ?

A. Yes, Sir.

Q. 6. Is not this plant known under another name ?

A. Yes, this plant is known here under the name of vulnerary of the Chartreux.

1717

Q. 7. Is that its scientific name ?

A. No, it is even improperly called vulnerary, its scientific name does not admit of the name vulnerary, it is a Saint John's wort, it is the hypericum nummularium.

Q. 8. Is or is not this plant common in the group of the Grande Chartreuse ?

A. This plant is common in the group of the Grande Chartreuse.

1718 Q. 9. Can or can it not be procured easily ?

A. It can be procured very easily.

MR. GUIGNIER : I make objection to these two last questions as leading.

MR. BARBANCEY : How leading ? I ask if it can or cannot be—

MR. GUIGNIER : I maintain my objection.

Q. 10. Can it be procured ?

1719 A. It can be procured very easily. The proof is that we procure it and I procure it by quantities every time that I have need of it, either from the peasants who are in the habit of furnishing these plants or from commission agents who are in the habit of centralising the plants which are gathered by the peasants, or from druggists at Lyons.

Q. 11. Can you indicate to me the names of some druggists who sell these plants ?

A. All the druggists in Lyons sell these plants : the

1720 firm with which I have treated specially is the firm of Poizat Fils, at Lyons. You have the firm of Béchet & Jourdan, which is also a Lyons firm. I have had occasion, moreover, to ask them for this plant, and to ask them the price of plants even, and I produce in support of my testimony two letters which these two firms have written me in reply to my request for prices and my request for supplies of plants.

Q. 12. Are these these letters ?

A. Béchet & Jourdan Frères—

1721

Q. 13. Are these letters really the ones which have been written to you ?

A. Assuredly.

" Lyons, March 31, 1906.

" Mr. Villard,
" Herborist,
" Grenoble.

" We acknowledge receipt of your letter of the 30th
" inst. We have about 300 kilogs of vulnerary of the 1722
" Chartreux on hand. Our price would be 300 francs
" the 100 kilogs, free Grenoble.

" As to the scientific name, we must confess that we
" are not very precisely documented, we think how-
" ever that it must be the hypericum nummularium,
" but, we repeat, we do not give you this information
" as absolutely true, for all our researches in our herb-
" alist books have been unfruitful, these books do not
" mention this plant.

" We remain, Dear Sir, 1723
" Yours truly,
(signed) Béchet & Jourdan."

Here is the letter of Poizat Fils :

" Lyons-Vaise,

" Mr. Villard,
" Pharmacist at Grenoble,
" Rue Bayard,

" I have your favor of the 30th March. I have some 1724
" vulnerary of the Chartreux on hand, from 200 to 300
" kilogs. I will quote you Francs 3:50 the kilog.

" The scientific name is—' nummularia odorant-
" issima.'

" I remain,
" Yours truly—"

Q. 14. Do you produce these two letters in support of your testimony ?

1725

A. I produce these two letters in support of my testimony. These two letters are similar to those we receive every time we have an important order to furnish, we ask for prices here and there and we receive replies.

(The two letters produced by the witness are annexed and marked Exhibits Nos. 16 and 17).

1726 Q. 15. Do you know this price current?

A. Yes, Sir, this price current was sent me at the same time as this letter of Messrs. Béchet & Jourdan, and in this price current I find, on page 38, the name—I find quoted vulnerary of the Chartreux, which is quoted 4 francs the kilog. This difference of price arises simply from the important quantity I asked for, and which permits druggists and purveyors to make lower prices than those generally stated on their catalogues, which are retail prices.

1727 Q. 16. Do you produce this catalogue?

A. I produce this catalogue in support of my testimony,—which amply proves that vulnerary of the Chartreux is current in commerce, with druggists.

(The catalogue produced by the witness is annexed and marked Exhibit No. 18).

Q. 17. Have you yourself gathered vulnerary?

A. Yes, Sir, I have gathered vulnerary as I have
1728 gathered about not all medical plants but a quantity, when herborizing either in my promenades in the Dauphiny, or when herborizing, and only doing that.

Q. 18. Where have you gathered vulnerary?

A. I have gathered vulnerary notably on the mountains of Chalais. It is to be found also in the valley of Aroise, it is in ascending to Chalais. I have gathered it also at Charminelle, at the foot of the Grande Sure.

Q. 19. Have you or have you not been solicited by the Liquidator of the congregation of the Chartreux or in his name to continue to supply him, for the

1729

manufacture of his liqueur, with the same articles of druggists as you supplied formerly to the Chartreux Fathers?

A. Yes, Sir, I have been solicited by a letter which I have received, and which bears the date of September, 1905, I think.

Q. 20. Is this this letter?

A. It is this letter, I produce it in support of my testimony. It is a letter of the 30th August, 1904.

1730

"CHARTREUSE, FACTORY OF FOURVOIRIE.

"MR. VILLARD,

"Druggist at Grenoble.

"SIR:—I beg to inform you that I am about to begin "again the manufacture of the liqueurs and elixirs of "the Grande Chartreuse at the factory of Fourvoirie. "In consequence, I have to ask if it would be agree- "able to you to furnish me with the Druggists' "articles which I may have need of, as you did 1731 "formerly to the Chartreux. In the affirmative, you "might address me a price current of your products, "especially of those which you were in the habit of "sending them. If you so prefer you could come to "Fourvoirie and make arrangements with me on this "subject.

"Awaiting your news I remain, Sir, yours truly,

"For the Liquidator of the Congregation of the "Chartreux.

(signed) "A. BOURGOGNE." 1732

Q. 23. Do you depose it in support of your testimony?

A. I annex it in support of my testimony.

(The letter produced by the witness is delivered and annexed, to be marked Exhibit No. 19).

Q. 24. What reply did you make to this request?

A. I replied to this request that in view of my re-

1733

lations with the Chartreux Fathers, I could not have relations, there could not be any commercial relations between the Liquidator of the Chartreux and me.

Q. 25. Did you not write a letter? Was it this letter or a copy of this letter?

A. It is a copy of this letter, here is the letter that I replied.

MR. GUIGNIER: I make objection to this letter
1734 as not being the best proof that the witness can produce.

MR. VILLARD: I certify that this letter is the exact reproduction of the copy I have in my copy letter book. Here is this reply.

" To the representative of the Liquidator of the " Congregation of the Chartreux, at Fourvoirie.

" Absent from Grenoble for some days, I reply to " your letter of August 30th last. My conscience and
1735 " my friendship for the Chartreux Fathers are opposed " to any business relations between us ".

Q. 26. Do you certify that this letter is identical with the copy which is to be found in your copy letter book?

A. I certify that this letter is identical with the copy which is to be found in my copy letter book.

Q. 27. And do you certify the authenticity of the sending of this letter?

A. I certify the authenticity of the sending of this
1736 letter.

MR. GUIGNIER: I maintain my objection.

Q. 28. Do you depose this letter in support of your testimony?

A. I depose this letter in support of my testimony.

(The letter produced by the witness is annexed and marked Exhibit No. 20).

1737

Q. 29. Could you if need be produce your copy letter book?

A. I could produce my copy letter book, but I would not leave it in the hands. A copy letter book, in commercial matters, is a necessary thing, which one should not dispossess himself of.

Q. 30. You certify that the copy which you remit is identical with the copy of that which is to be found in your copy letter book?

A. I certify that the copy which I remit is identical 1738
with that which is to be found on my copy letter book.

Cross-examination by Mr. Guignier:

x-Q. 1. Mr. Villard, do you know the peasants, do you know where the peasants gather the vulnerary which they sell to the druggists at Lyons?

A. Well—where the peasants gather vulnerary?—I cannot reply in an affirmative manner as to that, seeing that it would be necessary to follow them step by step 1739
and assist at their gatherings.

x-Q. 2. You do not know then where vulnerary comes from?

A. I know one thing: that when I address myself to a peasant of Saint Pierre d'Entremont or of Saint Pierre-Dauphiné, he does not go and gather it round about Voreppe nor does he of Saint Pierre d'Entremont go and gather it at Chambéry.

x-Q. 3. When you address yourself to the firm of Béchet & Jourdan or to Mr. Poizat, do you know where 1740
the merchandise comes from?

A. Absolutely no.

x-Q. 4. Have the two letters of Messrs. Béchet & Jourdan and Poizat which you have read reference to the same sort of vulnerary?

A. Ah, absolutely, the vulnerary of the Desert, the vulnerary of the Chartreux, hypericum nummularium.

x-Q. 5. How do you explain the difference between the two scientific names?

A. There are plenty of plants that have many scien-

1741 tific names, accordingly as one takes the botany of Linné or of Jussieu, for a same plant one finds different scientific names.

x-Q. 6. You told us just now that you yourself have gathered vulnerary at Chalais, at Aroise and at the Charmine?

A. Charminelle.

x-Q. 7. Are these regions in the group of the Chartreuse?

1742 A. Are they in the group of the Chartreuse? I am not very competent to tell you that. The group of the Chartreuse must include from Voreppe to Chambéry, that must be, I think, in the group, but, I tell you, I have no competence as to that.

x-Q. 8. And could you say if those places where you have gathered plants form part of the property of the State?

A. No, I do not think so, I think that they are the property of private persons, at Chalais, I think that it

1743 is the property of Mr. Nicolet.

x-Q. 9. You are quite sure?

A. Quite sure, you know? As to that, it would be necessary to have the administrative map, and see where property limits end.

x-Q. 10. Among those who supply you with la Vénérelle, here, are there peasants of Saint Laurent du Pont, of Saint Pierre de Chartreuse, of Saint Pierre d'Entremont?

A. There are some from about everywhere.

1744 x-Q. 11. You could not say what quality approximatively they supplied you with annually?

A. Oh, that, that is very difficult, that depends upon the years.

x-Q. 12. Do you know Mr. Baboin, who has declared to us?

A. Yes, Sir.

x-Q. 13. Mr. Baboin declared to us yesterday that a pharmacist had some knowledge of botany. According to you, has a plant that grows in regions totally different the same perfume?

1745

A. Has a plant that grows in regions totally different the same perfume? In regions totally different the same soil may be found, the same—the same temperature, the same altitude, and consequently the same properties may be found.

x-Q. 14. If the same conditions are found?

A. Yes, the same climatological and geological conditions.

x-Q. 15. So then, English lavender has the same perfume as French lavender? 1746

A. Ah, that—the same climatological conditions are not found in England as in France.

Mr. Barbancey: I make objection, the witness not being qualified as an expert botanist.

x-Q. 16. So then grapes do not give the same wine, they give, on the contrary, quite a different wine accordingly as they grow in such and such a place?

1747

Mr. Barbancey: Objection, I do not object to the witness replying to your questions, but I make objection: he is not qualified as an expert botanist. I do not object to his replying.

A. Wine is an artificial product, the plant is a natural one; there is a great difference between the two.

x-Q. 17. Mr. Baboin has spoken to us of authors who pretend that vulnerary grows in the Pyrénées and the Vosges. According to you, would vulnerary which we 1748
will suppose grows in the Vosges or in the Pyrénées have the same perfume as that which grows in the Grande Chartreuse?

A. Oh, I think so, I am persuaded even that in the vulnerary which grows in the Pyrénées, under the same climatological conditions, there will be found the same properties as in that which grows in the Grande Chartreuse. It is said even that the vulnerary of the Chartreux has for country of origin the Pyrénées, and that it was the Chartreux who transplanted it.

1749

x-Q. 18. But might it not be admitted that it has not the same perfume? that may be so: you spoke just now of the climatological conditions and of the altitude, if these conditions are not exactly the same do you think that the perfume of the vulnerary of the Chartreaux may be different?

A. I repeat what I said just now: that plants growing in the same climatological and geological conditions, of altitude and of latitude, should have the
1750 same properties.

x-Q. 19. Have you had in your hands vulnerary coming from the group of the Chartreuse and another coming from the Pyrénées?

A. I may have had some from the Pyrénées and from the group of the Chartreuse, precisely in accordance with what I told you just now: the plants which I ask of the Druggists at Lyons have not, as for me, a precise origin.

x-Q. 20. You have no certitude as to the origin?

1751 A. No, certificates of origin do not generally follow the plants that are sent.

Re-direct Examination by Mr. Barbancey:

Re-d. Q. 1. Mr. Consul, would you, if you please, show me the exhibits of these plants?

When you addressed yourself to the Druggists at Lyons, did these Druggists furnish you with a sample?

A. Yes, Sir, moreover every time we ask for plants,
1752 we generally ask for a sample.

Re-d. 2. You know well la Vénérelle or vulnerary of the Chartreux?

A. Yes, Sir, I can give you the description botanically if you wish.

Re-d. Q. 3. Were the samples which were supplied you by the Druggists at Lyons the same as this plant?

(Mr. Barbancey presents to the witness the Exhibit No. 1 and the Exhibit No. 2)

A. Yes, Sir, absolutely.

1753

Mr. Pellerin: You will produce a sample furnished by the Druggist at Lyons, I make objection to the question.

Mr. Barbancey: I put the question.

Mr. Villard: It is absolutely, it is absolutely conform, it is the hypericum nummularium.

Re-d. Q. 4. The plant which has been sent you as a sample is exactly identical with that plant there?

A. Yes, the plant which has been furnished as a 1754
sample, which I have had occasion to procure myself, is exactly identical.

Mr. Pellerin: I maintain my objection, the sample is not produced.

Re-d. Q. 5. You have sufficient experience and you know the plant sufficiently to be able to affirm to that?

A. Yes.

Re-d. Q. 6. You sell sufficient of it to be able to 1755
recognize this plant?

A. Yes, Sir.

Re-d. Q. 7. Have you preserved the samples that were sent you?

A. I could search for them—samples of plants are generally put into a Sack.

Re-d. Q. 8. But in short—

A. I could search for them—I think even that the vulnerary which I have must come from Lyons.

1756

Mr. Barbancey. To the objection which was made me just now I will make this reply: that I could not presume that my opponent would put in doubt the identity of the vulnerary sold by the Druggists at Lyons with that of the Dauphiny.

Mr. Villard. I certify that they are conform with those there, the samples that I have received are conform with those there.

1757

Mr. Barbancey. And I have not to preoccupy myself with having samples.

Mr. Pellerin. I maintain my objection.

Mr. Barbancey. I maintain my reply.

Second Session of Friday, June 8, 1906.

1758 Interrogatory of Mr. Lucien Verdant by Mr. Barbancey:

Q. 1. What is your name, Sir?

A. Verdant.

Q. 2. Your christian name?

A. Lucien.

Q. 3. What is your age?

A. 63 years.

Q. 4. What is your profession?

1759 A. A cultivator, a gatherer of plants for the Chartreux Fathers.

Q. 5. You gather plants?

A. Yes, Sir.

Q. 6. For account of the Chartreux Fathers?

A. I gather and have gathered.

Q. 7. You have plants gathered for account of the Chartreux Fathers?

A. Yes, Sir.

Q. 8. For how long?

1760 A. For three years.

Q. 9. Do you know Mr. Dejey?

A. Yes, Sir.

Q. 10. What is Mr. Dejey?

A. He is a gentleman who procures plants for the Chartreux. He had plants gathered for the Chartreux Fathers.

Q. 11. Where does Mr. Dejey live?

A. At Saint Pierre d'Entremont.

Q. 12. Does he still live there?

A. No, Sir, he has left.

1761

Q. 13. Since how long?

A. Last year.

Q. 14. At what time of the year?

A. I do not know the date he left, it is I who have succeeded him.

Q. 15. You have succeeded him since when?

A. Since this year, Sir.

Q. 16. Who gave you the succession or the custom of Mr. Dejey?

A. It was the Chartreux Fathers. 1762

Q. 17. Last year, how many, about—I do not ask you to precise—but about how many plants have you sent to the Chartreux Fathers?

A. About 1500 kilogs.

Q. 18. Do you send one or several kinds of plants to the Chartreux Fathers?

A. Several, Sir, several.

Q. 19. Among the plants you send to the Chartreux Fathers is la Vénérelle to be found?

A. Yes, Sir. 1763

Q. 20. Have you made contracts with the gatherers of plants?

A. Yes, Sir.

Q. 21. Can you cite some of these gatherers of plants with whom you have made contracts?

A. Yes, with a certain Rey, of Saint Pierre d'Entremont, of Saint Mème.

Q. 22. Saint Mème?

A. Saint Mème.

Q. 23. In the parish of Saint Pierre d'Entremont? 1764

A. Yes, Sir.

Q. 24. Were you not an employee of the Chartreux Fathers?

A. Yes, Sir, for a very long time.

Q. 25. For how long?

A. 38 years.

Q. 26. Since how long are you no longer their employee?

A. Since their absence I work also for them. I have plants gathered.

1765

Q. 27. You have plants gathered for them?
A. Yes, Sir, for them.

CROSS-EXAMINATION BY MR. GUIGNIER:

x-Q. 1. In what part, Mr. Verdant, do you gather la Vénérelle, or cause it to be gathered?
A. Among the rocks.
x-Q. 2. At what place?
1766 A. In the surrounding mountains and properties.
x-Q. 3. In the group of the Chartreuse?
A. No, Sir, on the mountains of proprietors, no.
x-Q. 4. Of what parishes?
A. Saint Mème.

MR. BARBANCEY: An observation: I would beg of you to be precise. I fear that the witness does not understand very well whether you speak to him of the property or of the group of the Grande Chartreuse.

1767

x-Q. 5. I ask him if it is in the group of the Chartreuse that he gathers or has gathered the plants, la Vénérelle?
A. It is always in the—in the mountains of Saint Pierre d'Entremont, Saint Mème, I do not know if they are included in the group of the Chartreuse.
x-Q. 6. But you yourself, have you made gatherings?
A. Yes, Sir, I have made some.
x-Q. 7. In what parts have you gathered these plants?
1768 A. On the Grand Som, on other mountains.
x-Q. 8. Is it solely on the Grand Som or its vicinity, is it on the property of the State, is it on parish property?
A. It was on the mountains, I think, of the hospice, during the time that the Chartreux were here, that I gathered them.
x-Q. 9. You have gathered them on the Alièmard?
A. No, Sir.
x-Q. No?
A. No.

1769

x-Q. 11. On the Arpison, have you gathered any ?

A. No, Sir, on the Grand Som then on the mountain which is called the Collet.

x-Q. 12. The Collet ?

A. Yes, Sir.

x-Q. 13. It is in what parish ?

A. It is in the parish of St. Pierre de Chartreuse.

x-Q. 14. Did you on the 6th of June current make an expedition of Vénérelle to the Chartreux ?

A. No, Sir. 1770

x-Q. 15. You have not made an expedition ?

A. No, Sir.

x-Q. 16. Is the Collet on the property of the State or—

A. I do not know, Sir.

Mr. Barbancey : Objection, the witness is not qualified as a land surveyor.

Mr. Guignier : It is not a question of geometry. 1771

x-Q. 17. Does it belong to the hospice ?

A. To the hospice, I do not know.

x-Q. 18. Is the property of the hospice bordering on the property of the Chartreux ? You must know a little of these quarters, since you were employed by the Chartreux during 38 years.

A. I did not gather, I was employed at the distillery.

x-Q. 19. At the distillery at Fourvoirie ? 1772

A. Yes.

x-Q. 20. Could you tell me whether eight or ten days ago you did not make a demand for the concession of plants in the parishes of Saint Laurent du Pont and of Saint Christophe entre deux Guiers ?

A. Yes, Sir.

x-Q. 21. Are these parish properties in the neighborhood of the property of the State ?

A. Perhaps so, Sir.

1773

x-Q. 22. And why did you withdraw your request for a concession ?

A. Ah, I thought I could do without it, that I could do otherwise.

MR. BARBANCEY : Objection, all these questions being personal to the witness and having no reference to the case in cause.

1774 x-Q. 23. I continue. Was it not because you were asked what were the plants you desired to gather, and not wishing to reply to that you withdrew your request for a concession ?

A. Sir, I thought that I could do otherwise.

x-Q. 24. I put this question to you. Were you asked what were the plants you desired to gather ?

A. Yes, Sir.

x-Q. 25. Yes. And what plants were told you ?

A. Oh, I did not give the names.

1775 x-Q. 26. You did not give the names ?

A. No, Sir.

x-Q. 27. And you withdrew your request ?

A. Yes, Sir.

x-Q. 28. Do you receive a pension from the Chartreux ?

A. Yes, Sir.

x-Q. 29. Have you a son who is a workman with the Chartreux at Tarragona ?

A. Yes, Sir.

1776 x-Q. 30. Do you know, Sir, the mountain of the Alpette ?

A. Yes, Sir, a little.

x-Q. 31. Is it situated in the department of the Isère or in the Savoy ?

A. I am not able to tell you.

MR. BARBANCEY : Objection.

MR. GUIGNIER : Why ?

MR. BARBANCEY : Because here is a man who inhabits a district, but who certainly does not

1777

know sufficiently geography to reply to the questions that are put to him.

MR. GUIGNIER : The witnesses that you produced precisely this morning, gave explanations precisely this morning as to these facts.

MR. BARBANCEY : Because they inhabit the parish.

THE WITNESS : They inhabit the parish, and are proprietors even.

1778

x-Q. 32. Then you do not know the importance of the Alpette as regards its capacity, its surface ?

A. Ah, no, I am not of the district, I am from Saint Laurent du Pont.

INTERROGATORY OF MR. ADOLPHE DOURNON, BY MR. BARBANCEY :

1779

Q. 1. What is your name, Sir ?

A. Dournon.

Q. 2. Your christian name ?

A. Adolphe.

Q. 3. Your age ?

A. 38 years.

Q. 4. Your profession ?

A. Architect expert.

Q. 5. Have you had recently judicial difficulties with Mr. Lecouturier, Liquidator of the properties of the 1780 Order of the Chartreux ?

A. I have had a slight discussion with Mr. Lecouturier, but by the intermediary of Mr. Guignier, that is to say Mr. Guignier had asked me in the name of Mr. Lecouturier to go to Paris to depose in a law suit, and we arranged a meeting. I had made my arrangements to go to Paris, and at the last minute I was countermanded. I thereupon asked Mr. Lecouturier, always through the intermediary of Mr. Guignier, for an indemnity for my loss of time, and receiving no reply,

1781

I was obliged to address myself to the Judge of the Peace. The Judge of the Peace gave me a citation permit, and following that I saw Mr. Guignier and by a common accord we decided to go and see the Judge of the Peace and settle the question amicably, which we did, and the Judge of the Peace condemned Mr. Lecouturier to pay me an indemnity of 100 francs, which moreover I have received

1782 MR. GUIGNIER: I make objection, as having no relation to the case.

Q. 6. Mr. Lecouturier, in his interrogatory of the 18th of May last, made certain declarations relating to the official report you were charged by the Tax Department to prepare at the time of the assignment of the business of the Chartreux to the Abbé Rey.

Mr. Lecouturier attributed to you certain declarations and drew certain conclusions from your report.

1783 Before putting precise questions to you, I will acquaint you with the part of the deposition made on this subject by Mr. Lecouturier.

Interrogatory of Mr. Lecouturier, of Friday, May 18, 1906, by Mr. Kelly: (Reads to witness Qs. 59, 60, and x-Qs. 25–34, inc., Deft.'s Record).

That is the deposition of Mr. Lecouturier.

Was it the Abbé Rey who made you the declaration which I have just read to you: "The excellence"—etc.—and which you have simply recorded in your

1784 report, or is it a personal opinion that you have given?

A. The declarations made me by the Abbé Rey have been recorded in my report from the outset; and following these declarations I have given opinions absolutely personal, that is to say, statements of an expert. I have taken from the statements of Mr. Rey what I thought necessary to enlighten me, and the rest, I passed over in silence, I did not discuss it.

In any case, it was never a question of plants with the Abbé Rey. The letters I received from the Abbé Rey are concerning details of acquiring alcohol, sugar,

1785

aromas; the expenses of employees, etc.—but it was never a question of the plants which entered into the secret of manufacture, a secret which I had not to look for, my mission being only to estimate the value of a business.

Q. 7. Mr. Rey—I wish to be precise—has Mr. Rey ever given you, either verbally or in writing, any information concerning the plants which he employed and as to the origin of these plants?

A. Oh, never, never at all, that I affirm, the question 1786
of plants was never broached—we never opened our mouth on the subject.

Q. 8. On what did you rely then to make this declaration: "The excellence," etc.—?

A. The excellence of the alcohols, is it not so, the excellence of the choice, of the sorting of the plants made by the monks; all that was a public opinion, an opinion which is currently stated in Grenoble, and when Chartreuse was spoken of, at the time that I made my report, a thoroughly finished product was 1787
spoken of, and it was on this that I relied in my report to show that the products were well chosen, were well sorted, is it not so, something that was known to everyone; it was what was said publicly all around me, it was a guarantee, a monopoly so to say for the sale of the liqueur. My role of an expert was to show that this liqueur was a superfine liqueur, which sold, well so to say, forcibly. That is what I wished to prove in my report, it is for that that all that was said is recorded in my report, it is my personal opinion, 1788
supported by what I heard, but without any other declaration.

Q. 9. It is only on "hearsay" that you gave that opinion?

A. Ah, absolutely, on "hearsay." Now, among the public, is it not so, it is certain that it is only so to say, gossip. Now, there is a little local vanity in showing that it is only in this particular part that such a product can be made, but I have not received declarations either from the Abbé Rey or any other person.

1789

Q. 10. On this necessity of plants from the group of the Grande Chartreuse for the manufacture of the liqueur?

A. Absolutely no.

Q. 11. And you have just told that there was a sort of ' country ' vanity, locally, to insist on claiming that it was in the group of—

A. The plants were gathered. For it was very well known that the alcohol came from the South, did not
1790 come from the group, it was only the plants, the aromas which entered into the details furnished by the Abbé Rey, in the detail of the annual expense. There is an article which gives: aromas and drugs, 90,000 francs,—and under the name of aromas were the flowers and the drugs, they were powders, exotic things which I do not remember. Moreover we did not dwell on that, which for us was an expense of 90,000 francs. The great expense was the alcohol, it was particularly on this subject that we continued our researches.

1791 Q. 12. I go back to what you have just said, which strikes me greatly: there was a sort of local vanity for the public, the Dauphiny public--

MR. PELLERIN: Objection, leading question.

MR. BARBANCEY: For the Dauphiny public to circulate the rumor that the plants of the country were indispensable for the manufacture of the Chartreuse.

1792 A. That, that is what was said currently by the public.

MR. PELLERIN: I make objection to the way in which the question was put, the opponent making known his opinion.

MR. BARBANCEY: I have just cited the words which the witness himself had pronounced, I have said that I was much struck by this declaration of the witness.

1793

Mr. Pellerin : I maintain my objection.

Mr. Barbancey : I interrogate the witness as to the opinions he has given in his report, and I ask him what he meant to say in his report.

(The witness) : I repeat again what I have said, that with regard to the plants, it is not declarations, it is a personal opinion. The Abbé Rey never made declarations to me as to the plants ; moreover I am absolutely incompetent to distinguish one plant from another. 1794
Moreover it was not a question of a chemical examination of the product, it was a question of the valuation of a mark.

Q. 13. I will be precise. Did the Abbé Rey or any other Chartreux ever tell you that the plants of the group of the Chartreuse were necessary for the manufacture of their liqueur ?

A. Never.

Q. 14. Was it the Abbé Rey or any other Chartreux who told you that it was notably to the virtue of the 1795
plants gathered in the group of the Grande Chartreuse that the public attributed partly the finesse and the virtues of the liqueur ?

A. No, never, it was never a question of that, the Abbé Rey never made such a declaration to me.

Q. 15. The Abbé Rey never spoke to you about the plants he employed for the manufacture of the Chartreuse ?

A. He never spoke to me about that.

Q. 16. Did he indicate to you the origin of these 1796
plants ?

A. Absolutely no, we never spoke of them together.

Q. 17. For whom were you the expert ?

A. The Tax Department against the Abbé Rey.

Q. 18. Whose interests had you to sustain ?

A. The Tax Department.

Q. 19. Had you to sustain the interests of the Abbé Rey ?

A. Absolutely no. That is to say in sustaining

1797

the interests of the Tax Department, I sustained the interest of the business.

Q. 20. The particular interest of the Abbé Rey. Did you sustain the particular interest of the Abbé Rey?

A. Absolutely not. The particular interest of the Abbé Rey at that moment was to diminish the value of the business, and as for me, my role was to show the real value of the business at the moment of the assignment.

1798 Q. 21. Was your report accepted by the Tax Department?

A. Absolutely.

Q. 22. Was it accepted by the Abbé Rey?

A. No.

Q. 23. How did the matter end?

A. By a compromise on the figure of seven millions, which was accepted by the Administration.

Cross-examination by Mr. Guignier:

1799

x-Q. 1. Mr. Dournon, when you established your report, you took oath?

A. I took oath.

x-Q. 2. Well, then, I read—you have necessarily taken the engagement to speak the whole truth—I read in your report this:

"It suffices to call to mind with respect to this that "the value of this mark is due partly to the excep- "tional quality accorded by the public to the prod-

1800 "ucts which are really gathered in the district,

Mr. Barbancey: What page, if you please, that I may follow?

Mr. Guignier: Page 21:

Mr. Barbancey: Will you recommence?

Mr. Guignier: "It suffices to call to mind with re- "spect to this that the value of this mark is due partly "to the exceptional quality accorded by the public to "the products which are really gathered in the district,

1801

"as we have been able to see from the plantations of "herbs in the enclosures of Fourvoirie and of the "Convent"—

You maintain your affirmation with respect to this?

A. Absolutely, we have remarked plantations of herbs in the Convent, both at Fourvoirie and above, but I did not say in my report that all the products emanated from the district, since I do not know the composition. I am not a botanist.

x-Q. 3. I do not say that to you. I ask you simply 1802
if you maintain what you have said in your report?

A. Absolutely, there are plants that we have seen, we have seen plants in the gardens.

x-Q. 4. Do you maintain all the statements in your report?

A. Absolutely.

x-Q. 5. As an Expert, have you had to sustain an interest whatsoever, or to be impartial?

A. I had not to sustain an interest, I had to be impartial. I was asked to estimate the value of a busi- 1803
ness, to estimate this value, it would not have done to run it down, it was essential to gather all the information that I could. As it was not fitting that I ask to see account books that might be refused me, I was forcibly obliged to gather the sayings of one and another, and principally those which the Abbé Rey was disposed to furnish me with. Now, once again, as I said, of these sayings I took those I thought good; the rest I left aside.

x-Q. 6. The conversations of the Abbé Rey were 1804
rather with the object of diminishing the value of the mark?

A. Naturally, seeing that we were against him. All that he could say to me was to diminish the value, and as for me what I said was to show the value of the mark. And I will tell you one thing: If the Abbé Rey—Just now I read a declaration which astonished me greatly for I never made that declaration. I am made to say that I received a declaration from the Abbé Rey saying that all the plants entering into the

1805

composition of the liqueur came from the group of the Grande Chartreuse. In the first place I never had a declaration to make.

x-Q. 7. 'Are really gathered in the district', did you say?

A. Yes, but I did not say all the products. I do not know what this liqueur is composed of, I do not know its composition.

x-Q. 8. Mr. Dournon,—it is an accessory question,—
1806 do you know Mr. Dondey?

A. Mr. Dondey, I know him, because at Saint Laurent du Pont I had some business as to a joint property.

x-Q. 9. Could you tell us if to your knowledge he is a sworn surveyor and municipal councillor at Saint Laurent du Pont?

A. I do not occupy myself with politics, and I do not know the councillors.

x-Q. 10. Do you know if he is a sworn surveyor?
1807

Mr. Barbancey: Objection; let the witness speak.

Mr. Guignier: I do not wish to prevent him.

Mr. Barbancey: He may say some interesting things which will be covered by your voice.

A. As municipal councillors, I know Mr. Pichat who is the mayor; I know the deputy mayor, whose name
1808 is——. I had made a request at the Town Hall of Voiron, which was however rejected,—for I have a small property,—I had asked to widen a small road, I had made an offer, that is why I have had occasion to address myself to the municipality. But I do not know the councillors, so then I did not know that Mr. Dondey was a councillor.

As to the second question, I know that Mr. Dondey is a surveyor; as to whether he has taken oath at the Prefecture I am unable to say, I do not know.

x-Q. 11. You are yourself a sworn surveyor?

1809

A. I have never taken oath, I am a surveyor, as we are about twenty at Grenoble.

x-Q. 12. To be a sworn surveyor, is a certificate of morality necessary ?

A. That has never been asked for.

x-Q. 13. When you made your request to be a sworn surveyor—

Mr. Barbancey : Objection, the witness has never said that he had made a request to be a 1810 sworn surveyor.

A. In short, I am an expert, it is an absolutely free profession. I worked for the Prefecture on the occasion—on the decease of the Bishop de Faval, it was I who made the estimation of the episcopal revenues. I was complimented by Mr. Chas. ——, Secretary General of the Prefecture. I was the expert for the Tax Department during four years, I quitted voluntarily because among the public, is it not so, it occasioned 1811 me unpleasantness among my private clients. Actually I am the expert of the Direct Taxation Bureau, I am making an extensive estimation of the Neyret factories—two million francs.

Re-direct Examination by Mr. Barbancey :

Re-d. Q. 1. To the declaration which you have just made me, it was desired to oppose one of the declarations which you made in your report of examination, 1812 and the following passage was read to you :—

" It suffices to call to mind with regard to this that " the value of this mark is due partly to the exceptional " quality accorded by the public to the products which " are really gathered in the district, as we have been " able to see from the plantations of herbs in the " enclosures of Fourvoirie and of the Convent."

This passage, does this phrase signify, and can this passage of your report be relied on for stating that only in the group of the Grande Chartreuse the plants, necessary for the manufacture of the liqueur, grow ?

1813

A. Absolutely no. The declaration which is made is not a declaration, it is an expert's statement. There is in my report, I have remarked that there were plantations of herbs in gardens, and that these plantations of herbs served for the liqueur. Now, if these plantations were a blind for the sellers who came to see the distillery, to show them— Look, here are the plants, it is made by us, it is carefully prepared— I absolutely do not know.

1814 Re-d. Q. 2. But does that signify, does this passage of your report signify that it is only in the group of the Grande Chartaeuse that the plants necessary for the manufacture of the liqueur can be found?

A. Ah, no, absolutely no.

Re-d. Q. 3. For the last time I ask you: has it ever been question, on the occasion of your examination or on any other occasion, between you and the Abbé Rey or any other Chartreux Father, of the plants which enter into the manufacture of the Chartreuse?

1815 A. No, Sir.

RE-CROSS-EXAMINATION BY MR. GUIGNIER:

Re-x-Q. 1. Mr. Dournon, ought not an expert to rely on the statement of the parties to make his report, to form his opinion?

A. The expert ought to listen to the parties and ought to gather every information that he can procure to strengthen his opinion, so as to be thoroughly edified

1816 for the constitution of his report.

Re-x-Q. 2. Now, I read at page 19 of your report this:

"The excellence of the alcohols apart, it is to the "preparation made by the Chartreux Fathers, and to "the virtues of the plants gathered in the massif of "the Chartreuse that the public attributes partly the "finesse and the virtues of the liqueur and of the "elixirs."

Do you maintain this appreciation?

A. It is a personal opinion.

1817

Re-x-Q. 3. Do you maintain it?
A. I maintain it.

RE-RE-DIRECT EXAMINATION BY MR. BARBANCEY:

Re-re-d. Q. 1. I add: do you maintain it with the complementary explanations you have furnished when I had occasion to interrogate as to this same passage?
A. Absolutely, Sir, it is an opinion that I gave, and what I have written corroborates also my preceding declarations. 1818

RE-RE-CROSS-EXAMINATION BY MR. GUIGNIER:

Re-re-x-Q. 1. A last question: according to you, the explanations which you have just given, are they of a nature to weaken the importance of the explanations of your report?

MR. BARBANCEY: Objection. To what importance do you make allusion? 1819
MR. GUIGNIER: To the importance of this statement.
MR. BARBANCEY: From what point of view?
MR. GUIGNIER: I withdraw the word "importance", if you wish.

(To the witness). You have given in your report this appreciation which we have just taken up, I ask you if in your idea the declarations you have just given may attenuate, may contradict whatsoever your appre- 1820
ciation?
A. I do not see how they can contradict it, it is the same opinion that I expressed in my report as that which I expressed just now, that is to say, that the plants which enter into the composition of the liqueur have never been the object of a study whatsoever on the part of the experts, that has been a thing altogether accessory to our work. If we may have seen a few plantations of herbs, is it not so, we have added this phrase to our report, but principally as to the

1821

sorting of the plants, it was the excellence of the alcohol. We have glided over the question of plants, seeing in them absolutely nothing of advantage to the value to the mark.

INTERROGATORY OF MR. D. E. J. BOITON BY MR. BARBANCEY:

1822

Q. 1. What is your name ?

A. Boiton.

Q. 2. What is your christian name ?

A. Désiré Emanuel Joseph.

Q. 3. Your age ?

A. 62 years.

Q. 4. Your profession ?

A. Former Government land surveyor of the first class, expert land surveyor and forester.

1823

Q. 5. Do you krow well the group of the Grande Chartreuse ?

A. Oh, yes.

Q. 6. Can you tell us to whom certain mountains about which I will speak to you belong.—To whom does the Haut du Seuil belong, the Alpe and the Alpette, near the Isère ?

A. Near to the valley of the Grésivaudan ?

Q. 7. Near to the valley of the Grésivaudan.

A. The Haut du Seuil—

1824

Q. 8. You can, Mr. Boiton, if you have official documents in support of your declaration, I beg of you to produce them in support of your declarations.

A. Yes, that will facilitate me—

Q. 9. And I repeat my question : to whom do the mountains known under the name of the Haut du Seuil, the Alpe or the Alpette near to the valley of the Grésivaudan belong ?

A. The Haut du Seuil, which is to be found, consequently below the sources of the Guiers, the mountain of the Haut du Seuil and of the Alpette belong to Mr.

1825

de Marcieux, to Mr. Camand and to the inhabitants of Saint Mème, in Savoy, because the Alpe, the Alpette, the Arpette is absolutely the same thing.

Mr. de Marcieux possesses then the mountain which extends from the limits of the department of the Savoy, because this limit cuts across between a first chain of mountains which dominates the valley of the Grésivaudan and a second chain which goes off to the Grenier. Consequently this suite of mountains, which starts from the Dent de Crolles as far as the Grenier 1826
is cut then across. That is why the Alpe, for the inhabitants of Saint Mème, the Alpe and the Haut du Seuil, and Mr. de Marcieux bear the same name.

Mr. de Marcieux possesses, consequently, at the Haut du Seuil,—and there I can give exact indications—exact, be it understood, that is to say, according to the extent indicated by the Government plan.

Q. 10. What are these documents which you are going to produce?

A. The documents of the government plan, that is to 1827
say, an extract from the matrix of the government plan.

Q. 11. Is it official?

A. It is delivered by the Director of the Indirect Tax Bureau, it is the only one which has the right—

Q. 12. Are the documents which you produce to be relied on?

A. Yes, seeing that they are government documents, the Director is the only person having the right to certify documents to be conform with documents of the 1828
government plan, and precisely—

Q. 13. And these sheets which you produce, were they delivered by the Director—

A. Yes, they are signed, Mr. de Marcieux possesses then in the mountains called the Haut du Seuil and the Alpette, a surface of 782 hectares 66, according to the elements of the government plan.

Q. 14. Will you produce the document?

A. Following that and to the North—Mr. Guignier moreover knows what it is—following and to the North

1829

is to be found the mountain always called the Alpette, and belonging to the parishes of Sainte Marie du Mont and of Barraux, that is to say a mountain which is indivisible between several parishes, and which forms part of the ancient mandate of la Buissière. These parishes possess, consequently, on this plateau, if such may be called a plateau, for it is very undulating, a surface of 663 hectares 40, of which here are the documents.

1830 This mountain—between Mr. de Marcieux and that mountain there, between this mountain, of which I have just given the extract, and that of Mr. de Marcieux is found the mountain of the inhabitants of Saint Mème, and the mountain of Mr. Camand, whose name I heard cited yesterday.

Q. 15. But have you the justification of the property of Mr. Camand ?

A. No, it is in Savoy, and at the present time the government plan of the canton of the Echalles is being
1831 made, and the documents of the government plan are not yet finished, that is to say they will be finished only after six months from the date of their " mise en recouvrement."

(The two extracts from the matrix of the government plan of which mention is made above are deposed by the witness, and marked Exhibit Nos. 21 and 22).

1832 Q. 16. To whom does the Arpison mountain belong which joins the Dent de Crolles?

A. Wait, I have not finished—adjoining Grenier, the parish of Chapareillan has a mountain of 564 hectares of which here is the extract: 564 hectares 3 ares.

Q. 17. Mr. Boiton, I beg of you, reply to my questions. To whom does the mountain of the Arpison belong, which adjoins the Dent de Crolles ?

A. I will tell you, it is what I am looking for at this moment.

1833

Q. 18. I do not wish to pass in review all the mountains of the Isère, only a few.

A. The Dent de Crolles—The mountain of the Arquille which extends to the North of the Dent de Crolles belongs to Mr. Guerier de la Forte, or otherwise said Mr. de la Forte; he is known under the name of Mr. de la Forte—This mountain as 92 hectares.

Q. 19. To whom does the mountain belong known under the name of the Chalais, Charmine or Charminelle ?

1834

A. It is known more particularly by the name of Chalais—to Mr. Nicolet. Chalais belongs to Mr. Nicolet, to the parish and to Messrs. Morral and Allard. Allard is the partner of Mr. Nicolet, it is indivisible. The parish has 48 hectares, Messrs. Allard and Nicolet 48 hectares—I give you only the hectares, the documents will give you the details up to centiares ; Allard and Nicolet 3 hectares 79, Nicolet 48 hectares, and Morral 44 hectares—Here are the documents—

1835

Mr. Barbancey : That is sufficient for me, Sir, I thank you.

(The documents produced by the witness are annexed and marked Exhibit Nos. 23, 24, 25).

Mr. Guignier : Mr. Boiton cannot know—

Mr. Pellerin : I wish to make the following objection : I make objection to the documents produced, to the extracts from the matrix of the governmental plan, as not being the best proof, and as not having been produced by the signer of the same.

1836

Q. 20. Mr. Boiton, do you certify that you yourself requested these extracts of the Director of Direct Tax Department ?

A. I went there myself.

Q. 21. You went there yourself ?

A. Yes, and it was on seeing the plans that I requested these extracts.

1837

Q. 22. You have moreover compared them yourself with the plans ?

A. Yes, since to have them one must have the plans.

Q. 23. You have been able to satisfy yourself personally that the indications which figure in these extracts correspond with the plans.

A. Absolutely.

Q. 24. You certify that the indications which are found in these extracts—personally—are conform with
1838 the plans deposed ?

A. In the archives, yes.

Q. 25. In the archives ?

A. Yes, absolutel y.

Q. 26. You certify besides that the person who has signed these extracts is really the person who bears the name indicated ?

A. Mr. Forest, yes, I know him particularly well.

Q. 27. You know him personally ?

A. And I know the Director personally.

1839 Q. 28. And that this person, according to our laws and to the French Code, is solely qualified—

A. Solely qualified, there has been issued recently a ministerial circular interdicting a person soever from giving a certified extract conform with the documents of the government plan.

Q. 29. And can the government plans be brought here ?

A. No.

Q. 30. How could anyone proceed otherwise than
1840 you have done ?

A. One cannot proceed otherwise.

MR. PELLERIN : I mantain the objection.

CROSS-EXAMINATION OF MR. BOITON BY MR. GUIGNIER :

x-Q. 1. Mr. Boiton, the portions which you have indicated—

A. The mountains—

x-Q. 2. The divers mountains which you have indi-

1841

cated, do they form part of the group of the Grande Chartreuse?

A. Oh, certainly, I have taken only in the group of the Chartreuse.

x-Q. 3. Now, could you tell us what is, in the group of the Grande Chartreuse, the importance of the property of the State, as regards the rocky parts?

A. Ah, it would be necessary for me to make a study for that, I cannot answer you.

1842

Mr. Barbancey: Objection, as not replying to the questions which I myself proposed, not being the counter part of the questions which I put.

Mr. Guignier: I beg your pardon, has not Mr. Boiton already expressed some ideas, some appreciations from this point of view during his interrogatory?

Mr. Boiton: Not from the point of view of the rocks, from the point of view of surfaces 1843
but not of rocks, I maintain my deposition.

x-Q. 4. You cannot say what is the importance, in the part of the State, of the rocky part, of the meadows and woods?

A. Of the meadows, I have stated 203 hectares,—my memory is still fresh—meadows enclosed in the State forest, and 92 hectares, the part taken from the Chartreux, and given to the liquidation. I have indicated the surface of the State forests, according to 1844
the official documents.

x-Q. 5. You do not remember what was the figure you gave?

A. No, no.

x-Q. 6. To the wooded part?

A. For the wooded parts of that which belongs to the State I have given 6,000 and odd, I have not the figure in my head.

x-Q. 7. In the parts, in the properties which you have just cited, can you indicate the importance of

1845

the rocky parts, and the importance of the non-rocky parts?

A. No, I should be obliged to make a special work. I would not allow myself to affirm a thing I might say in the air. You ought to know me.

x-Q. 8. Can you indicate in an approximative way what are the measures of altitude of the different parts?

A. What do you mean? what does that mean,—measures of altitude?

1846 x-Q. 9. In the group of the Chartreuse which are the points the least high and the most high?

A. Grenoble is lower than the Grand Som, the Dent de Crolles is higher than—

x-Q. 10. What are the measures?

A. For that it would be necessary that I— For that you have only to take the map of the Staff, which I can depose, and on the map of the Staff one has only to read, but I have not that in my head.

x-Q. 11. Would you take the map and tell us the
1847 altitude of the Alpette?

A. It must be 1300 to 1400 metres at sight. I do not know whether the height is given here, because this map is lithographed, consequently it is very difficult to see. I have figured on it the limit of the department to give more clearness to my deposition from the point of view of that which concerns the Alpette, indicating that the Alpette belongs to three proprietors, being at the same time the Alpette, or the Arpette or the Alpe. Well then, there—(The witness takes a magnifying
1848 glass and looks at the map.) I see there a height 1336 which is to be found among the rocks above Saint Même. And I see—

[The map is marked Exhibit No. 26].

x-Q. 12. Mr. Boiton, could you tell us whether the State possesses a part of the Alpette, a part of the Haut du Seuil?

A. Not of the Alpette, of the Haut du Seuil a very small, a very small part, seeing that I have just told

1849

you—What I have just told you reposes on—you have not a measure? I will tell you at once the importance.

Mr. Barbancey: Will you allow me an observation? If you desire it, Mr. Boiton, who is interrogated on questions of altitude, to be able to determine these altitudes he needs a certain material. We can postpone the interrogatory till tomorrow or after tomorrow, and he could prepare the work. 1850

Mr. Boiton: I could do it in 24 hours.

Mr. Guignier: He has a map.

Mr. Barbancey: Still it is necessary for him to have at hand what is necessary to give answers to your questions.

(The witness:) In short, the part of the State, that which you ask me at this moment, I see it, it is this small cone—

x-Q. 13. Could you give the boundaries, the confines 1851 of this part?

A. It is Mr. de Marcieux, it adjoins Mr. de Marcieux.

x-Q. 14. On all sides?

A. On all sides, except the lower part which adjoins the forest.

x-Q. 15. And at a cursory glance, you cannot roughly indicate—

A. It is not possible. I would not allow myself to give an indication whatsoever that was not exact and 1852 precise.

x-Q. 16. Is the State proprietor of a portion of the mountain of the Chalet?

A. Chalais, Ah, that is very easy. You can see it from Grenoble, you have seen it like me, you do not need to ask me. Above Chalais is the forest of Chalais, but it is not that which I indicated just now. Chalais is the former property of the Dominicains, which belongs to Mr. Nicolet, above Chalais—

x-Q. 17. Above the corner of Mr. Nicolet?

1853

A. Above the corner, the wooded part which adjoins a pasturing mountain, the name of which escapes me, which is above Voreppe, this little group to which Mr. Guigner makes allusion is a small wood compared with the ensemble of the forest of the Chartreuse. I could give you the surface if I had 24 hours—It is above Chalais, bordered by a band of rocks which limits the parish of Mont Saint Martin, which we see from here, which we see from Fontanile in short—

1854 x-Q. 18. Are the private properties which you called attention to just now, Mr. Boiton, surrounded by walls, no ?

A. What a curious question to ask me ! That, for example, is too much—

x-Q. 19. Are there natural signs ?

A. Why, no, you know well enough that in the mountain there are no natural signs.

x-Q. 20. There maybe—

A. There are not any. You cannot show me a

1855 natural sign : a stream or a ridge of rocks—

x-Q. 21. There may be a stream, ridges of rocks ?

A. Not anything else. A mountain—So, the limit of the State—I will cite you something that happened to me. I was called in a law suit between Saint Pierre d'Entremont (Isére) and Saint Pierre d'Entremont (Savoy) with regard to the entrance of the grottoes of Saint Méme. It was question of determining the limits between the two departments. I started from Saint Pierre d'Entremont at midday, at 5 o'clock in the

1856 afternoon I arrived at the Haut du Seuil. There, if I had not had the documents that Mr. Pérot senior gave me, I should have seen nothing. It is, however, the limit between the two departments ; between two mountains there is nothing. There were two large sign posts, I found one of them : it was necessary to find the other which was broken, and that is what I do not call the true limits, with the exception of a forest, some rocks, a stream. Thus, in the forest of Auder—of 98000 kilometres perimetre, I have twenty which are the natural limits.

1857

RE-DIRECT EXAMINATION BY MR. BARBANCEY :

Re-d. Q. 1. A last question : Is it the custom to give indications judged from sight on questions of altitude?

A. No.

RE-CROSS EXAMINATION BY MR. GUIGNIER :

Re-x-Q. 1. When a surveyor has a map before him, 1858
can he indicate the altitude?

A. On condition that the map indicates the altitude. I have not the altitude—

RE-RE-DIRECT EXAMINATION BY MR. BARBANCEY :

Re-re-d. Q. 1. Does the map indicate the altitude?

A. It indicates certain points, it gives altitudes, thus, for example, the high summits which have served as trigonometrical points for the Staff are assigned as the altitude, they have indicated on the map— 1859

Re-re-d. Q. 2. But to determine the altitude of certain points, and notably of the points which Mr. Guignier has cited you, one must make a veritable calculation ?

A. If it is not inscribed.

Re-re-d. Q. 3. Is it inscribed on the map ?

A. No, for all that is not inscribed on the map a special work must be made—act on other information which can be obtained by instruments, the most ordinary of which I will cite, the most 1860
simple is the barometer to determine the altitude.

Re-re-d. Q. 4. Consequently, is it possible, with the aid of the map of the Staff which you have before you to determine at once the altitude of the different points that you—

A. No, there are only those which are printed that I can read : A special work must be made.

1861

RE-RE-CROSS-EXAMINATION BY MR. GUIGNIER:

Re-re-x-Q. 1. Can you not indicate the others by comparison?

A. No.

Re-re-x-Q. 2. Seeing that you have indicated—

A. No, because here is what often happens in the mountains, and which you know as well as I. We start, for example, from the Moucherotte, which every-
1862 one knows at Grenoble, we go to the Pic Saint Michel—the Pic Saint Michel is higher than the Moucherotte, and yet we describe a curve which makes the altitude as we have in our—If you asked me at the forest of S.—what is its altitude, I would tell you: I do not know.

Re-re-x-Q. 3. My question is put to a forest surveyor who knows his country.

A. I know it, I pretend that I know it—

1863 RE-RE-RE-DIRECT EXAMINATION BY MR. BARBANCEY:

Re-re-re-d. Q. 1. Mr. Boiton, will you take the engagement, if you are informed right here as to the points the altitude of which is desired to be known, to bring us your reply tomorrow afternoon?

A. No, I cannot bind myself to do that.

Re-re-re-d. Q. 2. For Monday afternoon?

A. No, because if you asked me as to points I do not know, which are not on the map, that I may not be able to find the maps, I should be obliged to go to
1864 the place.

Re-re-re-d. Q. 3. The points indicated on the map?

A. If I have only to read, I will take the old map of the Staff engraved on stone, which is not at all the thing—by means of this map I can read: there is such an altitude—

Re-re-re-d. Q. 4. At the points indicated on the map, but as to those the altitude of which is not determined on the map, could you within 48 hours, if the points were indicated to you, give the altitude?

A. Yes.

1865

Mr. Barbancey.—I propose that Mr. Boiton be heard tomorrow.

Mr. Boiton.—Not tomorrow, I have not time.

Mr. Barbancey.—On Monday?

Mr. Guignier.—I have put all the questions I had to put.

Mr. Barbancey.—I propose to continue the Session on Monday.

Mr. Guignier.—I have nothing more to say.

1866

Mr. Boiton.—Must this map be deposed?

Mr. Barbancey.—You have already deposed it, it is the same.

(The Session is adjourned at 3.50, P. M. The Commission is adjourned to the next day, Saturday, June 9, 1906, at 11, A. M. for the Interrogatory of Mr. Henri Jobert).

1867

Session of June 9, 1906. (Grenoble.)

The Session is opened at 11.15 A. M. at the Consulate of the United States, at Grenoble. Are present:

Mr. C. P. H. Nason, Consul of the United States;

Mr. Barbancey, Secretary to Mr. Bonnet, Counsel for the Plaintiff, assisted by Mr. Bachrich, Stenographer;

Mr. Guignier, Attorney at Grenoble, representing Mr. Edmond Kelly, Counsel for the Defendant.

1868

Interrogatory of Mr. Henri Jobert, by Mr. Barbancey.

Q. 1. What is your name, Sir?

A. Henri Jobert.

Q. 2. What is your age?

A. 26 years.

Q. 3. Your profession?

A. Attorney.

Q. 4. Attorney?

1869

A. Attached to the Civil Court of the First Instance.

Q. 5. Of what city ?

A. Of Grenoble.

Q. 6. Are you or are you not aware that Mr. Lecouturier, Liquidator of the Congregation of the Chartreux Fathers, put up to public auction the business and trade marks of the Grande Chartreuse, which the Chartreux Fathers formerly exploited, at Fourvoirie,
1870 Isère, with the dependences of this business ?

A. Why certainly, Sir, the adjudication must even— was announced to take place before the Civil Court at Grenoble, on the 20th of June, I believe, the 20th of June current.

Q. 7. Posters—

A. Posters have been placarded on the walls of Grenoble, and I have procured one of them for myself at the prosecuting attorney's, Mr. Guignier, which poster I have brought you.

1871 Q. 8. This poster is exactly identical with those placarded on the walls of Grenoble ?

A. Oh, yes, besides its origin allows of no doubt, it is the poster which is placarded on the walls of Grenoble.

Q. 9. Can you produce this poster in support of your testimony ?

A. I produce this poster in support.

(The poster deposed by the witness is annexed
1872 and marked Exhibit No. 27.)

Mr. Guignier.—I make objection to the production of this document as having no relation to the affair in cause, and again as not being sufficiently identified, and as not being the best proof.

Mr. Barbancey.—Will you explain to me why this poster is not sufficiently identified, and why it does not constitute the best proof ?

Mr. Guignier.—It is not necessary for me to explain further.

1873

Q. 10. Is it possible, is it possible, Maitre Jobert, to procure one's-self a more authentical proof and otherwise to procure one's-self a proof that posters have been placarded on the walls of Grenoble?

A. But I do not see the possibility of having other proofs than this one. It is a legal poster which serves for legal publicity, it emanates from the attorney who is charged with the carrying out of the sale.

Q. 11. From my honorable opponent, Mr. Guignier, here present, if I mistake not? 1874

A. Maitre Guignier, here present, it is a document which emanates from him, and I do not see the possibility, I do not see the practical means and the possibility of having a document other than that.

MR. BARBANCEY: I do not think that my honorable opponent, Maitre Guignier, contests the exactitude of the poster which comes from his office?

MR. GUIGNIER: I say nothing. 1875

Q. 12. You affirm that this poster was handed you by Maitre Guignier, prosecuting attorney in the name of the Liquidator?

A. Certainly, yes.

Q. 13. And that Maitre Guignier, prosecuting attorney, is indeed the same Maitre Guignier who is here present to conduct the cross-interrogatories?

A. Yes, Sir, these are things not to be discussed. It is a material fact which I affirm in the most complete 1876 manner.

Q. 14. You will be kind enough to certify that this poster is conformable with those placarded on the walls of Grenoble, for identification.—

Has a specification been drawn up to indicate the conditions of sale of this business?

A. Yes, Sir.

Q. 15. Are you acquainted with the specification?

A. But, this specification, I went and took knowledge of it at the Record Office of the Court at Grenoble,

1877

I have had a copy of it made, copy which I afterwards went and examined and compared with the original.

Q. 16. It is this copy which you have had taken?

A. Which I have had taken at the Record Office of the Court at Grenoble, and which I myself went and verified the exactness by comparing it with the original. This specification was drawn up by Maitre Guignier, attorney prosecuting the sale in the name of Mr. Lecouturier.

1878 Q. 17. You will be kind enough to certify this copy conform, and sign it for the identification.

A. That will be easy for me.

(The copy of the specification produced by the witness is annexed and marked Exhibit No. 28.)

MR. GUIGNIER: I make objection to the production of this document as having no relation to the case, and as not being sufficiently iden-

1879 tified, and as not being the best proof.

Q. 18. Is it possible, Sir, to furnish at this present time a proof other than that which you give me, that is to say a copy which you yourself have had taken, which you have verified, and which you certify conform with the original deposed with the minutes of the Record Office? Is it permitted to the Record Office clerk—

A. I do not think that the clerk of the Record Office has the right to deliver copies of specifications as long

1880 as the adjudication has not taken place.

Q. 19. Consequently, at the present time it would not be possible to obtain an authentic copy, engrossed, of the specification?

A. He has not the right to deliver copies, I am certain, nor to verify a copy of a specification before the adjudication has been pronounced.

Q. 20. Does it enter into the attributions of the Record Office clerk to himself deliver certified conformed copies on unstamped paper, not engrossed, of documents deposed at his office?

1881

A. Why, no, Sir, he can only deliver copies when the state of the proceedings permit it, he cannot deliver certified copies; he may deliver a copy, but he has not the right to certify it.

Q. 21. You told me just now that you were an attorney attached to the Civil Court of Grenoble. Do these functions accredit you to this Court?

A. But we are the auxiliaries of justice, official auxiliaries.

Q. 22. Is credence due to your testimony when you 1882
affirm that you went to the Record Office of the Court to which you are accredited, and when you affirm that you have had a copy taken of a document, and that the copy of this document is conform, after verification?

A. But it does not appear to me that anyone can seriously contest my affirmation. I protest energetically against the objection which was made just now when I came to say that I had taken knowledge of the specification, which I myself have seen, that I have 1883
had a copy of it taken which I was careful to verify personally, and which, I may add, was communicated to me by the clerk of the Court. It is a thing of which I am as certain as it is possible to be.

Q. 23. Under oath you affirm that the copy that you have deposed is conform with the minute deposed at the Record Office?

A. I certify it absolutely, under oath.

MR. BARBANCEY: As to the other part of the 1884
objection which Maitre Guignier has made in saying that the production of this document has no relation to the case in cause, I beg Maitre Guignier to develop his objection and to indicate to me in what the production of this document has no relation to the case in cause?

MR. GUIGNIER: Well, the case which is in progress before the American Court is one that does not relelate to the operation announced

1885

for the 30th of June, of the sale of the business pertaining to the liquidation of the Chartreux.

MR. BARBANCEY: You are the attorney for the liquidation, it is you who prepared the specification. What does the Liquidator sell?

A. He sells the business and the trade marks, and two other buildings pertaining to the same liquidation.

1886

MR. BARBANCEY: What trade mark?

A. The trade mark of the products of the Grande Chartreuse.

MR. BARBANCEY: In what country?

MR. GUIGNIER: At Fourvoirie.

MR. BARBANCEY: In what country? The marks exist in what country? In France only. He does not sell only the French marks?

1887

MR. GUIGNIER: I am not held to make declarations, I am not a witness, I am a party, and I do not think that I have to furnish explanations which appear to me to be absolutely foreign to the formalities of the inquiry now taking place.

MR. BARBANCEY: I am in any case happy that you declare that the production of this document has no relation to the case in cause, for the case in cause is the question of the property

1888

of the trade marks in the United States and if the production of the document which I now furnish has no relation with the United States, I am happy to learn it from you.

MR. GUIGNIER: Do not make me declare that I limit in any degree whatsoever the rights belonging to the liquidation. I have neither this intention nor the power. I do not wish it to be said that I have made a declaration whatsoever which you may construe as a renouncement of the plenitude of the rights of the liquidation,

1889

for I think, not that I wish on my part to formulate a definitive pretension, I think that the mark which pertains to the liquidation has its influence and its property not only in France, but again abroad.

MR. BARBANCEY : That is your personal opinion. In any case, by the end of your declaration you acknowledge that the production of this document is by no means foreign to the cause in question.

1890

MR. GUIGNIER : No, I did not say that, since on the contrary I said that it was foreign to the case in point.

MR. BARBANCEY : Since you say I make objection, I discuss your objection, for after all it is easy to make objections without realizing the importance of these objections.

MR. GUIGNIER : I would remark to my opponent that we are not here to give ourselves up to discussion. We are proceeding with an inquiry in which it is a question of taking testimony and not of giving ourselves to digressions, discussions and contradictions.

1891

MR. BARBANCEY : I am trying to find out why the documents which I produce cannot be produced.

Q. 24. You certify that the copy of the specification which you submit is exactly identical with the minute of the specification filed at the Record Office of the Civil Court of Grenoble by Mr. Guignier, attorney for the Liquidator, carrying out the sale:

1892

A. Yes, Sir.

Q. 25. Will you, please, identify by your signature this copy, and annex it in support of your testimony? Do you annex it in support of your testimony ?

A. I annex it.

(The witness signs the copy of the specification).

1893

Q. 26. Will you, please, also for identification indicate on this poster that this copy was delivered to you by Maitre Guignier, attorney for Mr. Lecouturier?

(The witness signs the poster deposed by him).

CROSS-EXAMINATION BY MR. GUIGNIER:

x-Q. 1. I will ask Mr. Jobert if the copy he has pro-
1894 duced is a copy that he has taken or which the clerk of the Record Office delivered to him?

A. It is a copy which I have had taken.

x-Q. 2. Now, the act by which you were allowed to take a copy of this specification at the Record Office, was it not an act of complaisance on the part of the clerk?

MR. BARBANCEY.—Objection.

A. No, it was not an act of complaisance, since the
1895 clerk is bound to communicate the specification and receives a salary for so doing.

x-Q. 3. But the fact of being bound to communicate a specification to those who request such communication, does it give the right to the person taking such communication to take a copy of it?

A. But, well, since I have the right to take knowledge of it, I do not see that there is any means of preventing me from taking a copy. There is no time fixed for perusing a specification, it is a question of
1896 material time. I had the time, the clerk left it with me because no one else came and asked for the specification during this time.

RE-DIRECT EXAMINATION BY MR. BARBANCEY:

Re-d. Q. 1. Is there an article whatsoever of a French law whatsoever which prevents the taking of a copy of a document which is at the free disposal of the public at the Record Office?

A. There is not.

Re-d. Q. 2. Consequently is it exact to say, or is it

1897

exact to let it be understood that the Record Office clerk would have, so to say, abused his right by allowing you to take a copy of a document which he left at your disposal?

A. It is not possible to say anything of the kind, I repeat that the clerk, by his functions which are those of being the guardian of documents which are destined to be submitted to the public, the clerk is bound to communicate them, he is paid for that, for his communication. I have taken communication of it and 1898
to possess it in a more visible way I have taken a copy. There are at the Record Office tables and inkstands expressly for that purpose, which are destined for the public.

Re-d. Q. 3. Is not such a current custom in France?

A. It is a custom absolutely current.

American Consulate-General 1899
City of Paris
Republic of France.

SESSION OF SATURDAY, JUNE 16th, 1906, at 2 p. m.

Present:

AUGUSTUS E. INGRAM, Vice Consul-General of the United States of America, at Paris, France, Commissioner;

MR. BARBANCEY, Secretary of Mr. J. Bonnet, Counsel for the Plaintiffs, assisted by MR. 1900
BACHRICH, private stenographer;

MR. P. PELLERIN, Secretary of Mr. E. Kelly, Counsel for the Defendants, assisted by MISS GILLET, private stenographer;

MR. ANDRÉ WEISS, witness;

MR. G. DUCLOS, official sworn French stenographer.

ANDRÉ WEISS, of Paris, France, Professor of Law, aged forty-seven years, having been produced, sworn

1901

and examined on the part of the Plaintiffs, doth depose and say as follows :

DIRECT INTERROGATORIES BY MR. BARBANCEY, representing the Plaintiffs :

Q. 1. Will you give me your name, Sir ?

A. Charles André Weiss.

Q. 2. Your age ?

1902 A. Forty-seven years of age.

Q. 3. Your profession and qualifications ?

A. Professor at the School of Law of the University of Paris, Professor of Civil Law, Member of the Institute of International Law.

Q. 4. Have you written special works on law ?

A. Yes, apart from numerous articles published in various reviews, I have published a Treatise on Private International Law, a Theoretical and Practical Treatise on Private International Law, in five volumes, and
1903 besides that a Manual of Private International Law of which the 5th edition has just appeared.

Q. 5. Have you written articles for legal reviews of jurisprudence ?

A. Yes, for numerous French and foreign reviews.

Q. 6. Are you not the manager of one of these publications ?

A. I am the manager of the " Répertoire et Recueil Mensuel des Pandectes Françaises."

Q. 7. What is the nature and the importance of this
1904 Recueil ?

A. This publication is a répertoire, a sort of encyclopedia of law, it is a Dalloz up to date. 59 volumes have appeared and the work is complete. Besides this, a monthly collection always published under the same conditions as Dalloz and Sirey keeps it up to date.

Q. 8. Did you tell me how many volumes there were in this collection up to the present ?

A. 59 volumes.

Q. 9. In an opinion, which at the request of Mr

1905

Lecouturier, Professor Lyon-Caen gave in the matter of the trade-marks and products of the Grande Chartreuse, and which notably was submitted to the Tribunal of Hambourg, we have extracted certain passages on which we beg you to kindly let us know your opinion. Mr. Lyon-Caen said :

" When a trade-mark has been filed first in France,
" then in other countries, it cannot be admitted that
" there are as many distinct rights as there are coun-
" tries where filed, and that each of these rights is situ- 1906
" ated in the country of the filing where one avails
" oneself of it."

Is that exact or is it not ?

A. I have a great respect for the opinion of my colleague and friend, Mr. Lyon-Caen, but on the point in question my opinion is diametrically opposed to his. Mr. Lyon-Caen starts from this thesis, according to me absolutely contestable and often controverted, that the right to the mark constitutes a personal right, that it is, in a way, the individualization of the person of 1907
the manufacturer or of the merchant, whereas on the contrary, according to me and according to the opinion which seems to prevail, the mark is rather the exteriorisation of the merchandise, of the merchandise which it individualises and distinguishes from similar merchandise. Mr. Lyon-Caen thinks that it is a personal right, and that, as a personal right, once the frontier is crossed this right still subsists uniform and identical. Well, in there lies, according to me, the error of my learned colleague. 1908

I think, on the contrary, that the trade-mark has for its object to prevent all sorts of counterfeiting, to defend the product against a disloyal competition. Consequently, everywhere, wherever this disloyal competition is to be feared, the trade-mark acts by its effect, and is, in a way, virtually situated there. There are as many different rights as there are countries where the mark is filed and registered. It is not to the person of the manufacturer or of the merchant that one must look, it is not to the place where the principal seat of

1909

the industry or of the trade is, it is to the different centres of exploitation, to the countries where the mark produces its effect, its effect which consists in preventing all sorts of disloyal competition.

Q. 10. In what country can one enjoy the benefits attached to the rights of a mark ?

A. One can enjoy the benefits attached to the rights of a mark in the different countries where the mark is registered and filed. It is there in fact that there is
1910 the necessity of fortifying the titulary of a mark against competition and counterfeiting, it is therefore there that in reality the advantages of the mark are realised.

Q. 11. Mr. Lyon-Caen said :

" The right to the mark is one, no matter what the " number of countries where it enjoys legal protection. " The individual or the company who is proprietor of " a mark has only one right of ownership, only when " he has fulfilled in different countries the formalities " required to such end, he is allowed to establish his
1911 " exclusive right to the mark."

Is this exact, or is it not ?

A. I think I have replied in advance to this point of the opinion of Mr. Lyon-Caen. I shall confine myself to adding this : that the ownership of the mark cannot be efficacious except in so far as it is protected and guaranteed by the law. Now, which is the law that guarantees and protects the ownership of a mark ? It is the *local law*, the law of the country where the mark has been registered and filed. Therefore so many
1912 distinct laws which protect the mark against usurpation, so many different ownerships ; so many distinct laws, so many ownerships.

Q. 12. Mr. Lyon-Caen adds that " numerous treaties " recognize that when a mark has been filed in its " country of origin, it is admitted, as it is, to filing or " to registration in the other countries, so that it is pro- " tected in the latter by the bare fact of it being so in " its country of origin, even if it were one of those " that the laws of the other countries exclude in prin- " ciple from legal protection, such is the rule sanc-

1913

"tioned by the Convention of 1883 creating an Inter-
"national Union for the protection of industrial prop-
"erty.

"Article 6 of that Convention ordains:

"Every trade-mark or commercial mark regularly
"filed in its country of origin will be admitted to filing
"and protected, as it is, in all the other countries of
"the Union."

Is this exact, or is it not?

A. There is here an equivocation, to my mind, which 1914
cannot be doubted. Article 6 of the Convention of 1883, which I know and which I have had the opportunity of deeply examining very many times, article 6 has not at all the bearing which Mr. Lyon-Caen attributes to it. Article 6 of the Convention of 1883 establishes a régime of favour for certain marks, for marks which have been filed in one of the States of the Union. The Convention of 1883 accepts these marks, it allows them to be registered, as they are, provided that the conditions of form prescribed by the different 1915
local legislations be observed. This is what the Convention of 1883 means, but it never thought of excluding from protection the marks which had not been filed in one of the States of the Union. These marks are perfectly valid, they should be protected in all the States. That is apparent from the very terms of article 6 of the Convention of 1883, which I have not, it is true, before my eyes, but it is clearly apparent from the terms of article 6 as well as from the protocole of the closing of the Convention that the negotiators in- 1916
tended to reserve and that in an absolute manner, the protection of marks not filed in one of the States forming part of the Union. That appears to me to be an absolute certitude, it is said in the text of article 6 as well as in the protocole of the closing. There is notably the word "provided that" ("*pourvu que*") which appears to me, in this respect, to have quite a precise signification: it indicates very well that the régime of article 6 is a régime of exception which leaves out the common law, and the common law is

1917

the protection of each mark in the different countries according to the local legislation.

And besides, the Convention of 1883, even allowing that it has the singularly extensive meaning that Mr. Lyon-Caen gives it, does not at all say that the mark cannot be accepted, cannot be registered and filed in one of the States party to the Union unless it has been registered and filed in the other countries and according to the same rules. The Convention says no such
1918 thing; it is true that it reserves a right, it reserves a delay of four months, of a few months during which the mark filed in one of the countries of the Union can be admitted to filing in the other countries. But supposing the mark is only filed after this delay, the marks filed in foreign countries in the interval will have the preference.

Likewise the Convention of 1883 reserves in a very clear manner the application of public order, of the laws of public order. The Convention of 1883 says,
1919 that in any case marks, even those filed in the countries of the Union, cannot be admitted to filing in other countries unless they have nothing contrary to public order and to the laws.

Consequently I think that the argument that Mr. Lyon-Caen wished to draw from article 6 of the Convention cannot stand.

Finally, neither on the ground of the personality of the right, nor on the ground of the Convention of 1883 can it be said that there is solidarity between a mark
1920 as it is filed in its country of origin and the marks which cross the frontier and are registered in other countries. These marks are distinct.

Q. 13. I wish to particularize. Can a mark filed in France by a French manufacturer be considered as protected in the other countries abroad, by the sole fact of its being protected in France?

A. Not at all; not at all.

Q. 14. In order to be protected in the other foreign countries, should this French mark be or not be regis-

1921

tered in these foreign countries, conformably to the laws of each one of these foreign countries ?

A. Yes, in principle, the mark filed and registered in France should, in order to partake of the protection of the local legislation, be registered and filed in each of these countries. Only one exception is made, brought about by the Agreement of 1891, the Agreement of Madrid—

Q. 15. We shall come to that, Sir. But this mark filed in France and then filed in foreign countries, can 1922
it or can it not be refused by the different foreign countries ?

A. That does not admit of doubt. Each country is its own master at home, has the right of excluding from filing or from registration marks which appear to it contrary to the principles upon which its particular legislation is founded, contrary to the idea, more or less mistaken, which it has of public order. This is an undisputable principle of international right.

Q. 16. Then is it, or is it not exact to say that the 1923
mark filed in its country of origin is protected in other countries by the sole fact of its being filed in its country of origin ?

A. It is absolutely inexact.

Q. 17. In the passage which I read you a moment ago, Mr. Lyon-Caen speaks of treaties, of numerous treaties recognizing that when a mark has been filed in its country of origin it is admitted to registration in other countries. I should like to know if the right to the mark results or does not result from the treaty 1924
itself or if it results or does not result from the local law itself of which the treaty extends the application ?

A. It results solely and exclusively from the local law. The treaty has only one effect, one bearing, it is to strike down the barrier, to do away with the obstacle which was opposed to the exercise of the right of industrial ownership by a foreigner. But once this obstacle is removed, the local legislation recovers all its rights ; these rights are the only ones that are ap-

1925

plicable, its conditions are the only ones that must be observed.

Q. 18. Does the proprietor of a French mark hold or not hold his rights to the marks filed in a foreign country from the treaties which have been passed between France and these foreign countries, or does he hold them by virtue of the local laws, or does he not hold them by virtue of the local laws which the treaties have allowed to be applied to the French person who
1926 files ?

A. It is very easy to state the rule : it is solely from the local legislation that a Frenchman, assimilated to a native citizen, holds his right. The effect of the treaty, the only effect of the treaty is to remove from him the incapacity which might result to his detriment from his quality of foreigner.

Q. 19. Supposing that there were no treaty between two countries, would it be true to say that the mark filed in its country of origin would by that very fact
1927 be protected in the other country ?

A. It would be an absolute mistake, it would be contrary to the principle of the reciprocal independence of nations.

Q. 20. Would you indicate for me the consequences that you draw from that ?

A. I draw this consequence that each State has the right to prohibit the exploitation of marks within its territory, if it is its interest to do so, which have been filed and registered in other countries. It is the ab-
1928 solute independence of marks according to the countries.

Q. 21. Could you cite me a law which, while taking into account the Convention of 1883, to which Mr. Lyon-Caen has referred, did not—does not appear to admit just as it is, the mark filed in another country ?

A. I do not quite understand the bearing of your question. You ask me if to my knowledge there exists a law which does not abide by the principles which I have just developed.

1929

Q. 22. No, the bearing of my question is not that. Mr. Lyon-Caen has said that the mark filed in the country of origin was protected just as it was, and by that sole fact in the other countries—

A. Yes—

Q. 23. Could you not cite a law of a country which has adhered to the Convention of 1883 and which nevertheless declares that under certain conditions the mark filed in another country cannot be registered ?

1930

A. For instance there is the German legislation. In Germany, it is certain that a trade-mark having the character of a geographical appellation, of geographical designation is not admitted ; German legislation refuses the inscription of such a mark, even when it has been filed and registered in its country of origin.

Q. 24. Is the law of the United States conceived or not conceived in the same spirit ?

A. The law of the United States ?—You are no doubt referring to the law of 1905, the most recent law. It appears to me to be conceived absolutely in the same spirit. It reserves, absolutely, the application of the local legislation each time that the foreign mark appears contrary to this legislation.

1931

Q. 25. Mr. Lyon-Caen adds : " That is not all ; an " arrangement was concluded April 14, 1891, between " a certain number of States for the international " registration of marks. One single filing made in the " country of origin of the mark suffices to as- " sure for it protection in all the contracting coun- " tries. The Administration of the country of origin " files it at the International Office at Berne for the " protection of industrial property and this office un- " dertakes the international registration which produces " its effect in the territory of the contracting States, " just as if the filing had been made in each one of " them."

1932

Is it exact to say that one single filing made in the country of origin suffices to assure protection in the

1933

contracting countries, according to the arrangement of 1891?

A. The arrangement of 1891, the arrangement of Madrid, has had for consequence to create a sort of restricted union between a certain number of States, and this arrangement organizes an international registration, but it is not exact to say that this international registration has the effect of assuring, *ipso facto*, in an absolute and definite manner, to the filing and to the
1934 international registration which have been made at the Office at Berne, a universal effect, effect in all the countries between which this agreement, this restricted union has been concluded. It is not exact for, if my recollection with regard to this is precise, the agreement of 1891 reserves to the various States the right of opposing, in a measure, this international filing. That is to say that the international registration once done, it gives—and I am still speaking from memory—a delay of one year to the different States, counting from
1935 the international registration, and, during this delay, each State has the right to oppose the mark producing its effect within its territory.

Q. 26. I am going to read to you article 5 of this international arrangement of April 14, 1891, here it is:

"In all the countries where their legislation so "authorizes the Administrations to whom the Inter- "national Office notifies the registration of a mark shall "have the option of declaring that protection cannot "be accorded to such mark within their territory; they
1936 "must exercise this option within the year of the noti- "fication provided in article 3.

"The said declaration thus notified to the Inter- "national Office shall be transmitted by it without de- "lay to the Administration of the country of origin "and to the proprietor of the mark. The person "interested shall have the same recourse as if the mark "had been directly filed by him in the country where "protection is refused."

Given the explanations which you have just furnished us with, and the text itself of the law, is it exact, as

1937

Mr. Lyon-Caen says, that the mark filed in its country of origin is protected just as it is, and by such fact alone, in the other countries ?

A. What you have just read absolutely confirms my recollections ; it is quite apparent from the text of the article which you read, that the international registration has not the effect of solidarizing the marks, it results from that that each State has perfectly well the right to withdraw itself from the consequences of the international registration and to apply to the mark its 1938
local legislation.

M. Pellerin : I object to the question, as it was put by Mr. Barbancey, as not reproducing the thought expressed in the opinion of Mr. Lyon-Caen.

M. Barbancey : I again go over the passage of the opinion of Mr. Lyon-Caen which is thus worded :

1939

"That is not all." . . . (This 'that is not all' follows what was said before). . . . "An arrangement "was concluded on April 14, 1891, between a certain "number of States for the International Registra- "tion of marks. One single filing made in the "country of origin of the mark suffices to assure "for it protection in all the contracting countries. "The Administration of the country of origin files at "the International Office at Berne for the protection "of the industrial property and this Office undertakes 1940
"to the International Registration which produces its "effect on the territory of the contracting States as if "the filing had been done in each of them."

Do you contest the truthfulness of the passage of the opinion of Mr. Lyon-Caen which I have just enunciated ?

M. Pellerin : Why, no.

Q. 27. And I put the question : Given all the explanations which you have just given us and fur-

1941

nished us with, and the text itself of the arrangement of April 14, 1891, is it or would it be exact to pretend that numerous treaties—and the Convention of 1891 is in reality a treaty—that numerous treaties recognize that when a mark has been filed in its country of origin, it is admitted just as it is, to filing and registration in the other countries, so that—and I lay stress on this passage—it is protected in them by the bare fact of its being so in this country of origin ?

1942 A. In no wise, in no wise, it is always the local legislation which determines the condition of protection.

Q. 28. Mr. Lyon-Caen adds:

" The idea of the plurality of rights to the mark is " as inaccurate as the idea according to which there " could be several authors' rights or several literary or " artistic ownerships because of the right of the author " of a work of literature or of art being protected " thanks to the treaties or to the laws in several " countries.

1943 " If the right to the mark is one, no matter what the " number of countries where it is protected, in which " country should one admit that this right is situated ? " The situation of property is easy to determine when " corporeal things, either real or movable are in ques- " tion. But the determining of the situation may offer " assuredly certain difficulties when incorporeal things, " that is to say rights are in question. Thus the " country where debts are situated has been much dis- " cussed. The most generally accepted opinion at-
1944 " tributes to debts, as situation, that of the country " of the domicile of the debtor where they ought to be " paid.

" With regard to the situation of the right to a " mark there cannot be any serious hesitation. This " right identifying itself with the establishment of " which the mark is the accessory, it is natural to " consider the right to the mark as situated in the " country of this establishment. It is in such country " that the ownership of the mark arose, it is its " country of origin. Consequently the ownership of

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"the Chartreuse marks arose in France as identified
"with the establishment situated on French territory,
"this ownership should be considered as property
"situated in France, and on this account, the right to
"the marks of the Chartreuse should be included in
"the property subject to liquidation, and this right
"can be exercised by the liquidator just as much in
"countries other than France as in France itself."

Is it exact to say that the Chartreuse marks, those registered in foreign countries and in France, should 1946 be considered as property situated in France and that the right to the ownership of these can be exercised by the liquidator just as well in countries other than France as in France itself ?

A. That appears to me quite inaccurate. And first of all I am anxious to reply to the analogy that my colleague and friend wished to establish between the right of literary ownership and the right of industrial ownership, and more particularly the protection of trade-marks. It seems to me that there is no analogy 1947 between the two situations.

The right of literary ownership, or at any rate what is called literary ownership, that can be conceived, this right comes back in the end, to a single object: the right of reproduction of the work published by the author, while when trade-marks are in question, it is something different, the question is that of industrial exploitations which have different seats, which are carried on in distinct establishments, and which, consequently, are capable of having material situations equally distinct. 1948

Now, by going to the bottom of things, it seems to me easy to prove that the trade-mark has its situation in reality at the place itself where it is exploited ; it is the place where its effect and its advantages are realized, that is to say the place where it defends the right of the merchant or of the manufacturer against counterfeiting and against competition.

When it is said that a house is situated in such or such a place, no doubt is possible: it is in the place

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where such house has its material site that the advantages of the ownership, the direct rights which, united, constitute the right of ownership, are exercised, that is to say that one finds the *jus fruendi*, the *jus abutendi* which analysis discovers in the right of ownership. For an incorporeal real right it is the same thing, it is at Paris or at London, here or there, it has a material situation easily determined, and this material situation is the one where its proprietor receives from it at a

1950 given moment advantages.

For incorporeal property, such as a debt, it is more difficult to determine the situation of this incorporeal property because indeed a debt is an immaterial thing, a really intangible thing, which is not found here or there, it is a simple relation of law, one is obliged to have recourse to a fiction, and the fiction which one generally accepts, although a bad one is this : One asks where the creditor will reap the advantages of his right. The place where he reaps the advantages of his

1951 right, is the place where his debtor lives, it is there he must demand payment of the capital of his claim and the interest on the same, if there has been no contrary agreement. One can therefore without breaking the principles consider the debt situated there where the debtor is domiciled.

But when a trade-mark is in question the situation is different. There is no speaking of debtor or creditor ; the mark of ownership, or if you like the right of industrial ownership that the trade-mark reveals is, it

1952 also, a right, an incorporeal thing, but there is neither creditor nor debtor ; one must therefore look at the exact place where the titulary reaps the advantages included in this mark. This place, it is the place of its exploitation, or more precisely the various places, the various countries where such exploitation is exercised. There are therefore as many situations as there are places of exploitation as there are countries where the mark is filed and registered.

Q. 29. Could there not be found in the domain of

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intellectual or industrial law other analogies than those that Mr. Lyon-Caen wished to establish?

A. One analogy comes naturally to the mind; this analogy is precisely taken from the matter of industrial ownership. It consists not only in designs and trade-marks, there is another institution: the patents for inventions. Now, for patents of inventions, there is no doubt, nobody has ever contested this that the principle is the territoriality of the patents. Each patent exercises its influence, sanctions the rights of 1954
the inventor only within the limits of the country where it is accorded. The analogy is striking: what is true of the patent is true of the trade-mark, which is only a branch, a parallel branch of industrial ownership.

Q. 30. As a general rule, can foreign marks be considered as French property or situated in France, and on this account would the law of July 1, 1901, have any effect on them?

A. Marks filed and registered in a foreign country 1955
are not French property, are not property situated in France. Consequently, by principle and as a general rule French laws can only affect them in so far as the French legislator wished it and in so far as the foreign legislation does not conflict with the application of the French law as contrary to the principles of international public order. That is the principle.

Q. 31. I had specially in mind the French law of July 1, 1901, on the contract of association.

A. It is that as a matter of fact the French law of 1956
July 1, 1901, on the contract of association presents itself under somewhat special conditions. It is not one of those laws which can follow, which can accompany French people into a foreign country, it is not a law of private interest, it is not a law constitutive of "statut personnel" it is a law of police and of surety, and this law of police and of surety, it does not appear as if the French legislator wished to prolong, to extend its effects outside of our territory.

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Q. 32. Mr. Lyon-Caen in his opinion says further:

"The ownership of the marks of the Chartreuse has "arisen in France as attached to an establishment situ- "ated in French territory, this ownership should be "considered as property situated in France, and as "such, the right to the marks of the Chartreuse should "be included in the property submitted to liquida- "tion, and this right can be exercised by the liquidator "just as much in countries other than France as in
1958 "France itself.

"By adopting this solution, one remains faithful to "the idea discussed according to which property situ- "ated in France is alone affected by the French law of "July 1, 1901.

"An argument of great strength corroborates this "solution. The result to which the opposite doctrine "would lead would be particularly awkward. All the "marks with which the dispute is concerned bear the "words 'Liqueur fabriqueé à la Grande Chartreuse'
1959 "('Liqueur made at the Grande Chartreuse'). If the "right to the marks of the Chartreuse escaped the "liquidator in foreign countries, the Carthusian "Fathers would preserve it and, by exercising it, they "would fix these marks on bottles containing liqueurs "made outside of France.

"Thus the marks would become an instrument of con- "fusion and of fraud, since they would contribute to "make it be believed that the liqueurs offered to the "public are made at the Grande Chartreuse."

1960 Is it exact or is it not exact to say that the marks by remaining in the hands of the Carthusian Fathers would become an instrument of confusion or of fraud for the reason given by Mr. Lyon-Caen?

A. The argument does not appear to me very serious. It appears to me very difficult to maintain that by the facts of the marks of the Grande Chartreuse being exploited by the Carthusian Fathers, these marks will be an instrument of confusion and of fraud. Admitting that a confusion be possible it is easy to do away with it. It suffices—I think that it is the present

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practice—to inscribe on the labels of the bottles : "Liqueur actuellement fabriqueé à Tarragone"— I think that Tarragone is the present centre of the manufacture of the Carthusians. It seems to me that on the contrary the confusion, the fraud would result from the exploitation by the liquidator of the marks of Father Garnier, of the primitive marks of the Carthusians. It does not appear doubtful,—call it secret of manufacture or knack—it does not appear doubtful that the Carthusians took away with them, into their exile their 1962
process of manufacture, and that therefore the liquidator and the distiller whom the liquidator has put in his place or associated with himself are not in possession of this process of manufacture. Therefore what is sold under the old label under the name and the colors of the Carthusians, will be a different Chartreuse from the old one. Here is the fraud, the confusion of which the foreign consumer might be the victim. We have the right to say that such a mark worked under such conditions would be a deceptive mark. 1963

Q. 33. Exploited by whom ? Will you be more precise ?

A. Exploited by the liquidator.

Q. 34. Does the transmission of a French business necessarily carry with it the transmission of either the French or the foreign marks, and what is the bearing of the decisions of the Court of Appeal and of the Court of Cassation in the matter of the matches ? Can these decisions be or can they not be invoked in the matter that we are dealing with, that is to say the 1964
Chartreuse ?

A. I reply very decidedly to the first question : for me it is incontestable that the transmission of a business does not imply necessarily, and as a consequence or as an accessory, the transmission of the trade-marks which have been exploited there. The business is a universality, not, as has been said, a legal universality, but a universality *de facto* which is composed of various elements united by man's will, but which can be separated and disassociated. The trade-mark is one

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of these elements, it can be separated from the business by the will of those who had joined it to this business. It seems to me that the decisions are absolutely settled in this sense. Jurisprudence, by numerous decisions, has recognized that a merchant, in alienating his business, can reserve to himself the exploitation of a mark. That has even been recognized in circumstances where the merchant's wish as to the transmission had not been expressed in a very definite
1966 manner. Here is a merchant who sells his business and who nevertheless reserves to himself the exploitation of a similar business. Well, jurisprudence has decided that the very fact of this reservation shows the will, the understood, the tacit will of the merchant to leave out of the transfer of the business the trade-mark which was its accessory.

Consequently, there is no necessary lien, no forced lien between the trade-mark and the business, it is a purely artificial lien, a contingent lien, which is the work of
1967 man's will and that man's will can destroy.

Q. 35. What is the bearing of the decisions of the Court of Appeal and of the Court of Cassation in the matter of the matches?

A. You are referring to the decision of the Court of Cassation of 1880. This is, if I remember rightly, what took place :

A law of 1872 wishing to augment the resources of the French State, had attributed to the State the monopoly of the manufacture of chemical matches. This
1968 law, this law of monopoly had as a consequence the expropriation, against indemnity, of the different manufacturers, of the different factories which manufactured matches on French territory, and, as a consequence, these factories found it impossible to exercise, to exploit their marks on French territory. The law of expropriation did not speak—I mention it incidentally—did not speak at all of the expropriation of the trade-marks, the expropriation affected the match-factories, it was only as a consequence, as a consequence of the newly introduced monopoly that French facto-

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ries lost the right of working their marks on French territory.

But the Company that the French State had substituted to itself, to which the French State had transferred its monopoly, did not content itself with the field of action thus offered to it, did not content itself with manufacturing matches on French territory, it put forth the pretension of exercising the monopoly, of exercising the rights conferred by the trade-marks, even outside of French territory, and it is then that 1970 the decisions of the Court of Appeal of Paris and the Court of Cassation intervened.

The Court of Appeal of Paris and the Court of Cassation decided in the same sense. Basing their reasons on the preparatory works of the law, basing them on the terms of the law, these two decisions held that the law of expropriation of 1872 had had and could have had no effect on foreign marks.

The reasons on which these two decisions are founded are very interesting. These two decisions state that 1971 the law of expropriation did not speak of marks, and particularly of foreign marks. It is an introductive law of a new monopoly ; this monopoly should be limited to the object that its authors were pursuing and, for the authors of the monopoly the law of 1872 had simply wished to establish the monopoly on French territory, it had not looked beyond the frontiers, nor had it wished to give to the company that the State was substituting to itself the right to exploit the chemical matches outside of France, the object of the 1972 authors had only been to institute the monopoly on French territory.

Besides it might have been said, one might have wondered whether, in reality this expropriation did not hide a veritable sale. An indemnity had been given to the expropriated Companies, it might be considered as the price of sale, one might wonder whether in the elements which had contributed to fix its amount there had not been taken into account precisely the loss that the expro-

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priated manufacturers were going to suffer from the relinquishment of their marks in a foreign country.

It is such an interpretation that the decisions of 1878 and 1880 wished to avoid. But I do not think that arguments from the decisions of 1878 and of 1880 can be used against us, it seems to me that on the contrary they are favourable to the thesis of the Carthusians. They are absolutely favourable to the theory of the Carthusians and I think that precisely

1974 an argument can be found *a fortiori* from these decisions in favor of this theory.

In fact, as I said a moment ago, the law of expropriation for the chemical matches had fixed an indemnity, it could therefore be said that in this law a real sale was concealed. Now, the law of July 1, 1901, which has also, it can be said, pronounced the expropriation of the Carthusians, has certainly not got the characteristics of a sale, there was no fixing of indemnities, there was no sale, there was no transmission

1975 of the business worked by the Carthusians, consequently the will of the parties—expressed or presumed will—is completely absent, it cannot be said that the expropriated persons were called upon to discuss, in any way whatever, the conditions of their dispossession, therefore if the will has been absent from the expropriation which they suffered, it is absolutely impossible to say that it is by the interpretation of their will that the trade-mark should be considered included in the business.

1976 Q. 36. But does it appear or not evidently from these decisions of the Court of Appeal and of the Court of Cassation that the marks whether French or foreign, can be separated from the business ?

A. For me it is absolutely evident.

Q. 37. Can you quote for me the passages of the decision which indicate that French and foreign marks are separated from the business ?

A. I have here under my eyes the Collection of Sirey in which are reproduced the decisions of the Court of Appeal of Paris of February 27, 1880, and of

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the Court of Cassation of November, 1881. Here are the "considérants" of the decisions of the Court of Paris, they are pretty long :

"Whereas, if the law of August 2 1872 has at-
"tributed exclusively to the State, in the whole extent
"of the territory of the Republic, the purchase, the
"manufacturing, and the sale of chemical matches, and
"if, consequently, it has provided by article 3 that the
"expropriation of the factories at present existing shall
"be proceeded with, this expropriation which is, after 1978
"all, only the dispossessing of private parties of the
"right of manufacturing and of selling on French terri-
"tory chemical matches, was necessarily in fact as in
"law, limited to what was strictly indispensable for the
"constitution and the exercising of the new monopoly,
"whether it be that the State, as it was authorized,
"works it directly by its agents or whether it grants it
"to private enterprise, like the "Compagnie Générale
"des Allumettes" (General Match Company); whereas
"the expropriations effected in the name of the State 1979
"and the corresponding indemnities, by the very
"terms and the object itself of the law, only affected
"the factories, that is to say what constituted the in-
"dustrial and commercial establishments of manu-
"facture and sale, in that their working was hence-
"forth absolutely forbidden in the whole extent of the
"territory :

"Whereas, the monopoly thus established sufficing
"in itself, the State who works it, or the Company its
"representative, had neither any interest nor any 1980
"right to deprive the manufacturers of their names
"and trade-marks to make them its own : whereas such
"a State 'Régie' is by its very nature exclusive of all
"proper and private denominations, as it has for its
"principal object to render the use thereof impossible
"in all countries where it exercises : whereas besides
"it has no need to gain a reputation from the public
"which is assigned to it as customers, products which
"it alone has the right to sell, without having to fear
"any competition : whereas the expropriation of the

1981 " factories thus accomplished with a view to a régime
" of monopoly, could not, as far as its object and its
" results are concerned, be assimilated to a voluntary
" transfer up which might be made in a purely private
" interest, without exceptions or reservations, of a
" commercial or industrial establishment:

" Whereas as the monopoly is to be confined to the
" limits of the French territory, the manufacture and
" the sale of chemical matches in all countries outside
1982 " of France remain as hitherto, under the protection
" of commercial and industrial liberty; whereas the
" expropriated manufacturers therefore had the right
" and it was to their interest to preserve, with a view
" to the industry which they could transport to a
" foreign country, the ownership and the use of their
" trade-marks and commercial names, whilst the
" French state or the grantee Company, could not in-
" voke the privilege of the monopoly to include them
" in the expropriation of the factories."

1983 It seems to me that it is easy to find in these " considérants " quite a serious argument, quite a decisive one in favour of our theory.

After all, why does the Court of Appeal of Paris confine the bearing of the expropriation to French territory only? It is of opinion that the establishment of the monopoly had only in view French territory, that the French State taking no interest in what might go on outside of the frontier, the object of the law was circumscribed to the limits of the State.

1984 If we place ourselves on the ground of the law of July 1, 1901, which is also a law of expropriation, but without indemnity, what object did one try to attain? Is it to give to the French State the means of making itself distiller, liqueuriste, and to exploit in all parts of the world liqueurs made on French territory? Evidently not. The bearing of the law of 1901 was singularly higher, it had a political bearing. The legislator of 1901 wished to break the power of the religious orders, he wished that there might no longer be on French territory congregations formed without the

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authorisation of the government. The legislator of 1901 did not trouble himself about what might happen outside of France, he did not trouble himself to know if the expelled congregations would be reconstituted outside of the frontier, if these business monks who have been mentioned in the course of the discussion, would continue to be business monks outside of France, and would continue the exploitation of their business. The object of the law of 1901 was therefore territorial also, it confines itself to France and 1986
can have no repercussion outside of our frontiers.

Well, the political analogies are striking in the two cases. In the one case as in the other the views of the French legislator limited themselves to French territory, he thought of France only, he did not in the least think of what might happen outside of our frontiers. Therefore the legislator's intention gives to the law of 1901 as to the law of 1872 an essentially limited and territorial bearing.

Q. 38. In a deposition that Mr. Millerand made be- 1987
fore the Consul General on May 14, 1906, I remark the following passage (page 54). It is precisely this decision of the Court of Appeal that is in question, and more especially the decision of the Court of Cassation which maintained—

A. Which dismissed the appeal.

Q. 39. Which rejected the appeal which had been taken against this decision of the Court of Appeal.

Mr. Bonnet in the cross-examination addressing Mr. Millerand, said to him what follows (x-Q. 43): 1988

" Q. 43. Not knowing the questions which were to
" be put to you, you see in me a little hesitation, but I
" want to read you a passage of the decree, save in sub-
" sequent interrogations, to specify its bearing.

" That on the 22nd of April following, the minister
" Mr. Léon Say replied that in so far as the trade-
" mark was concerned, it appeared to him to constitute
" a commercial property, which might be thus exploited,
" not only in France, but also abroad, and that the State
" could only appropriate same within its own territory,

1989

" adding that the foreign market should be completely
" beyond its action and remain open to all the com-
" panies which were dispossessed on account of the
" establishing of the monopoly; that, in a second let-
" ter of May 9, 1873, the 'Compagnie Générale' re-
" newed its claims, supported by more lengthy explan-
" ations, claiming even that it had received the most
" distinct assurances that the French Government for-
" mally stipulated in the expropriation Acts that the
1990 " entire ownership of the trade-marks was acquired by
" it, and would prohibit the use of same by the ex-
" propriated parties, both in France and in foreign
" countries; but that on the 16th of June following,
" the new Minister of Finance, Mr. Magne, after hav-
" ing referred in his reply to the preceding decision,
" explained that he thought like the company that the
" law of August 2, 1872, had placed the owners of the
" trade-marks under the impossibility of making use
" of same in France, but that this law and the condi-
1991 " tions of the concession had not destroyed the faculty
" that the manufacturers had of making use of same
" abroad."

" That is a passage that I wanted to bring out and
" compare with the explanations that you have just
" given us."

Monsieur Millerand made the following reply:

" I thank you for reading this passage, for it seems
" to me to prove—which supports the statement I
" made just now—that the Court of Cassation in
1992 " its decision, based itself, not at all on a gen-
" eral theory, according to which the marks abroad
" would be independent of the ownership of the
" business, but, relied on the contrary, on the ex-
" press terms of the law of expropriation, which was
" the contract made between the French government
" and the match companies."

I should like to know if it may be said that it is a general theory according to which it is maintained that the marks in a foreign country should be considered as independent of the good-will of the business,

1993

in so far as this business is transmitted either in virtue of a law of expropriation, or in virtue of a law of police and surety, and for the moment I shall attribute these characteristics to the law of 1901 on the contract of association ?

A. What appears to me certain, and that is apparent from my preceding explanations, is that it depends on the will of the party to include in the transactions of which a business is the object, the marks which constitute, to a certain degree, the accessories of this 1994
business. It is a question of will, of expressed or presumed will. When a contract comes in, it can be said that in this contract the marks have been included at the same time as the business itself; when a law of expropriation is in question one might, possibly, consider that there is a contract—those are the very expressions, if I am not mistaken, of Mr. Millerand,—a contract intervening between the expropriating party and the expropriated party. Hence it might give rise to an interpretation, one might wonder what was in- 1995
cluded in the contract, and if the law of expropriation formally excluded the trade-marks from the expropriation, it should be obeyed.

But in the case of a law which pronounces as in the hypothesis of the congregations, an expropriation without an indemnity, without an agreement, without a contract between the expropriated and the expropriating parties, it is evident that such a theory can no longer be maintained. There is no longer an expressed or a presumed will, there is on one side the omnipo- 1996
tence of the law, which imposes itself and on the other side the congregations who suffer it, who suffer the law that is made for them, and which they have not made, and which they are not permitted to discuss. Consequently the law cannot be considered as having meant to include in the expropriation which it makes the congregations undergo, and to have meant to include, by the effect of the understood will of the congregations, the trade-marks in the expropriation which affects the business.

1997 Q. 40. I think I remember, but I have not the passage before my eyes, that Mr. Millerand, evidently by mistake, said that the decision of the Court of Appeal in the matter of the matches had recognized that the Compagnie Générale des Allumettes ("General Match Company") had the right to exploit the marks in France. Is it not the contrary that was decided by the Court of Appeal?

A. There is nothing like that in the decree of the
1998 Court of Appeal of Paris of 1880. What it states is that on account of the establishing of the monopoly, the expropriated Match Companies were unable to exploit on French territory the marks of which they were dispossessed. But it is in no wise apparent from the law of 1872 that the companies were dispossessed of their marks; it is of their manufacture, of their industrial exploitation that they are dispossessed, but in consequence of the establishing of the monopoly they can no longer exploit their marks in France. But
1999 outside of the territory, where the monopoly could not extend its effects, their marks were free.

M. Pellerin: I should be obliged to Mr. Barbancey if he would look up the passage of Mr. Millerand to which he is alluding.

M. Barbancey: I have not got it before my eyes, I shall look for it, but it may take some time. I shall look for it afterwards.

2000 Q. 41. But that was not precisely my question. I asked whether, contrary to what I think Mr. Millerand said, the Compagnie Générale des Allumettes (General Match Company) beneficiary of the monopoly resulting from the law of 1872, had not been condemned to no longer use the marks even in France and I read in the dispositif of this decision what follows:

"Granting the appeal and reforming, declares the "action of the Societé Caussemille, Roche & Co. re- "ceivable and founded:—Consequently says that "within four months from the serving of the present

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"decision, the General Company shall be obliged to "remove from its trade-marks, from its match-boxes "or other products, prospectuses and any advertise- "ments whatsoever, in France as well as in foreign "countries, the names of Caussemille, Roche, Four, "Eydoux and Toussaint,—And, if it be not done "within the said delay and once this delay passed, "ordains the said Company to pay to the Societé ap- "pealing 20 francs as damages for each infraction "proved :—Authorizes the Society appealing to seize, 2002
"after the expiration of the said delay, all products of "the General Company bearing one or several of the "undermentioned names, etc. * * *

Will you tell me if you please if the passage which I read to you is exact and is reproduced in the work which I quoted to you a moment ago ?

A. The conformity is absolute.

Well, from this dispositif it appears to me to result with absolute certainty that the grantee company of the chemical matches had no right, even on French 2003
territory, to the exploitation of the marks of the expropriated companies. The same company has the monopoly of the manufacturing of the matches, but it cannot use the marks formerly exploited by the companies to which it has been substituted on account of the expropriation.

Q. 42. Mr. Millerand, in his deposition of May 14, 1906, declared what follows, in reply to questions which were put to him by Mr. Kelly :

"Q. 13. Did M. Lecouturier apply to the Tribunal 2004
"of Grenoble to obtain authorization to have the mark "of the Chartreuse abroad transferred ?

"A. As a matter of fact I did not argue in that case ; "I believe it was M. Sarraut, my collaborator, who "argued for M. Lecouturier. He asked the President "of the Tribunal, in Chambers, for an order authoriz- "ing him to take possession by virtue of the judgment "which had declared that the business and the marks "were the property of the congregation—he asked for

2005

" authorization to enter into possession of the trade-
" marks abroad."

As it is a little long, have you any objection to my giving the deposition itself to M. Weiss ?

M. PELLERIN : None.

M. BARBANCEY : And this because I can read a little rapidly.

2006 " The President of the Tribunal, if I remember
" rightly, signed an order in that sense, against which
" the Procureur, M. Ray, the Congregation of the Car-
" thusians, appealed, and the Court of Appeal, by a de-
" cision of December, 1905, reversed the order signed
" by the President (of the former court) upon a ques-
" tion of procedure and without passing upon the
" merits.

" Q. 14. Upon what was the decision of the Court of
" Appeal based ?

2007 " A. The reason for the decision was, as I have just
" indicated, purely and simply a question of pro-
" cedure. M. Ray, in his conclusions, had pleaded
" that the President of the Tribunal at Grenoble had
" exceeded his powers as a Judge in Chambers in
" passing upon the question which had been submitted
" to him relative to the marks abroad. The Court of
" Appeal admitted this point of view, declared the de-
" mand inadmissible and consequently, as I have just
" said, set aside, non-suited the Liquidator in his de-

2008 " mand, not on account of a consideration of the whole
" case, but for reasons of procedure, because, in its
" opinion, it was not before the President sitting in
" Chambers, that the motion ought to have been made.

" Q. 15. Before whom ought the motion to have
" been made ?

" A. The Court of Appeal did not exprssly state.
" It may be inferred from the 'motifs' themselves that
" the Court of Appeal considered that it was a ques-
" tion which ought to have been brought before the
" Tribunal.

2009

"Q. 16. The entire Tribunal ?

"A. The entire Tribunal, and not before the Presi-
"dent sitting in Chambers.

"Q. 17. Was there an appeal lodged against this
"decision of the 12th December, 1905 ?

"A. I do not know whether there was an appeal
"taken to the Court of Cassation.

"Q. 18. No, to the Court of Appeal ?

"A. It is the decision of the Court of Appeal that I
"have just referred to. 2010

"Q. 19. Did this question come again before the
"Court of Appeal ?

"A. The question came again before the Court of
"Appeal in the following form : I did not argue. M.
"Lecouturier petitioned the Court of Appeal of Gren-
"oble for an interpretation of its decision by which it
"had affirmed the judgment declaring that M. Ray was
"a person interposed. M. Lecouturier said to the
"Court of Appeal : But in deciding by your affirmance
"of the judgment of the Tribunal of Grenoble that the 2011
"business and all appurtenances and dependances,
"notably the trade-marks, were the property of the
"Congregation of the Carthusians, you have, by such
"decision, held that the foreign trade-marks constitute
"appurtenances and dependances of the business.
"Since a doubt has arisen on this point, I ask you, by
"the interpretation of your decision, to state the above
"fact explicitly. The Court of Appeal replied : 'We
"do not consider that there is any cause for interpre-
"tation and we non-suit you.' There again, as in the 2012
"preceding decision, as in the decision of December,
"1905, in this decision of March, 1906, the court did
"not pronounce, did not give judgment on the whole
"case, but has, upon a question of procedure, purely
"and simply avoided the request for interpretation
"which had been submitted to it.

"Q. 20. Mr. Kelly passes a document to the witness.
"Can you produce the pleadings of M. Ray on that
"occasion ?

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" A. Yes, here they are ; must I read them ?"

I pass over the passage relative to the conclusions of M. Ray.

" Q. 23. The decision of the Court of Appeal may " be divided into two parts : a series of paragraphs " which commence with the words ' attendu que—'

" By M. Bonnet : Which decision ?

" By M. Kelly : The decision of the Court of 1906. " And afterwards a paragraph which commences with
2014 " ' Par ces motifs, la Cour sans s'arrêter.'—Have the " two parts of this decision the same legal value ?

" A. Certainly not. The deciding part, and which " from the point of view of the interests at stake, and " of the question to be decided, is the only operating " part, is the dispositif. The motifs are arguments " which have evidently some interest because they " emanate from the Court, but which have only a rela- " tive value, in the first place because, as the Court " says in another decision or in this one itself, it may
2015 " happen that they have not even been discussed at " the Bar. Whether they be the personal ideas of the " Court or emanate from one of the parties, they are " arguments which have the authority of the Court " that pronounces them ; they have not the value that " the dispositif alone has, which itself, is the decision " that settles the litigation. The ' motifs ' are a dis- " cussion.

" Q. 24. Can the motifs be quoted as having the " value of *res judicata ?*
2016 " A. Certainly not.

" Q. 25. Then it is only the paragraph which begins " ' Par ces motifs ' ?

" A. That is where the dispositif begins, and the " commencement of the issue decided."

Did the order of February 15, 1905, to which M. Millerand alluded in his deposition pass upon or not pass upon the principal issue ?

A. It cannot be doubted but that this order encroached upon the principal issue, it is therefore quite with cause that the Court of Appeal pronounced the

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nullity thereof. It was not upon a question of procedure, as M. Millerand said in the examination which you have just read, but upon a real question of the main issue, that this nullity was pronounced. The order of the Judge in Chambers encroached upon the principal issue, because it implied the solution in the main of a singularly delicate and litigious question: the question of knowing whether the law of July 1, 1901, was a law of police and surety confining itself to French territory or if it was a law capable of producing its effects outside of the territory. The solution of this question was implied by the order of February 15, 1905, it therefore encroached upon the principal issue, and the Court could not pronounce its maintenance.

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Q. 43. Was it with reason or was it not with reason that the Court of Appeal nullified this order of February 15th, 1905?

A. It was with good reason, because it considered that the order of 1905 instead of keeping within the limits of the powers which the law accords to Judges in Chambers, had really exceeded these powers. The law allows a Judge in Chambers by extraordinary and conservatory measures to pass upon matters concerning the execution of a judgment, but it does not allow the Judge in Chambers to interpret judicial decisions. Now, in reality, it was interpreting the judgment and the decision rather than the judgment, since the decision had been rendered before the judgment which had declared the Abbé Rey to be a person interposed by the Carthusians; this judgment was interpreted by the order of the Judge in Chambers in this sense that the dispossession of the Carthusians was bound not only to the French marks but also to the foreign ones; it was not the execution but the interpretation of the judgment; the order anticipated an interpretation which should have been given by the Court of Appeal of Grenoble.

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Q. 44. On the whole you have just defined the powers of a Judge in Chambers, will you be more precise?

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A. The Judge in Chambers, if I recollect aright, and if I look to articles 806 and 809 of the Code of Civil Procedure, I think the Judge in Chambers can decide by extraordinary and conservative measures, he can also pass upon matters pertaining to the execution of a judgment, but he has no right to encroach upon the main issue.

Q. 45. Can he by order, enlarge a judgment or give an extensive interpretation thereto?

2022 A. It is absolutely impossible. The Judge in Chambers who undertook this work of interpretation or of enlarging in the manner that you have just mentioned would absolutely exceed his powers.

Q. 46. To resume, is it or is it not upon a simple question of procedure that the Court of Appeal nullified the order of February 15, 1905?

A. It was not for a question of procedure, but upon a question of the main issue, because the Judge in Chambers had exceeded his powers. He ought to have

2023 declared himself not qualified, to have said that there was no need for a motion.

Q. 47. Up to what point can a Tribunal or a Court of Appeal interpret a preceeding decision without attacking the principle of *res judicata*.

A. The principle of *res judicata* is the same as saying that once a decision has been rendered the issue that gave rise to this decision can no longer be brought before a tribunal between the same persons and under the same circumstances. It is the principle of article

2024 1351 of the Civil Code. This principle would evidently be infringed upon in case a tribunal after having rendered a decision, again passed upon the points which had already been definitely decided by it. But it is recognized that,—jurisprudence is absolutely unhesitating in this sense—that a tribunal or a court of appeal can, without in the least injuring the principle of the *res judicata*, interpret an anterior decision, but this jurisprudence fixes in a very clear manner the limits of this power of interpretation: the judge who interprets an anterior decision can neither modify, nor

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extend, nor restrain his anterior decision: authors and decisions are absolutely unanimous in this sense.

Q. 48. In his deposition, M. Millerand recognized that the Court of Appeal, by its decree of March 27, 1906, had refused to interpret, as demanded by Lecouturier its decision of July 19, 1905. In this refusal to interpret of the Court of Appeal of Grenoble, is there or is there not a veritable positive interpretation in the sense of the limitation of the preceding decision to French territory? 2026

M. Pellerin: Objection: a leading question.

M. Barbancey: I maintain my question.

A. That does not appear to me doubtful. The Court of Appeal of Grenoble, called upon to interpret its preceeding decision of June 19, 1905, by saying that, speaking of marks, speaking of the interposition of a person for the marks, had intended to mean foreign marks as well as French marks, the Court of Appeal 2027 of Grenoble, I say, called upon to give this interpretation, declared there was no need for an interpretation, that the question that it had passed upon, had been passed upon in the limits within which it had wished to pass upon it, that it had said all it wished to say, that it had said only what it had wished to say, that the question put had been clear, the Court of Appeal of Grenoble, going further, arrives at a veritable positive interpretation, declares that the interpretation would tend to nothing 2028 less than declaring the law of July 1, 1901, which is a law of police and of exception, applicable outside of French territory. It recognizes by that very fact, in as clear a manner as possible, that the law of 1901, in its mind, never had an extra-territorial scope.

Q. 49. Up to what point do the motifs of a judgment or of a decision participate in the authority of *res judicata* which is attached to the dispositif?

A. One frequently finds in judicial decisions and even in certain authors this affirmation that the au-

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thority of *res judicata* is only attached to the dispositif and not to the motifs of the decision. But such an affirmation must not be taken literally. There are, indeed, motifs and motifs. There are motifs which form one with, which are so closely united to the dispositif that they participate in the authority of *res judicata* which is attached to the dispositif. This is the distinction often professed by authors between subjective motifs and objective motifs. The subjective motifs of
2030 a decision are those which are personal to the judge, they are the opinions of the judge, the opinions which determine his sentence, they are the discussions, they are the arguments. Well, those motifs have not the authority of *res judicata*.

But on the contrary, when the motifs are objective, when they form one with the dispositif, when without them the dispositif could not stand, when the dispositif needs these motifs in order to be explained and to be understood, then these motifs have exactly the same
2031 authority as the dispositif itself, motifs and dispositif are one. It matters little where these motifs have found place, it matters little that they are placed in the decision before the words "*Par ces motifs*"; as long as they are necessary to understand the dispositif, as long as they are a necessary source of the dispositif, they have exactly the same force and the same authority. Jurisprudence is fixed in this sense by numerous decisions of the Court of Cassation, the most typical decision, if I remember rightly, is a de-
2032 cision of 1869 which lays down the principle in an absolutely formal manner.

Q. 50. Are you or are you not aware of the decisions of the Court of Appeal of Grenoble of December 12, 1905, and of March 27, 1906?

A. I have read these two decisions.

Q. 51. Have you copies of them?

A. Copies? Perhaps, in my portfolio—

Q. 52. Is this copy really a copy of the decision of December 12, 1905?

A. Of December 12, 1905.

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Q. 53. Is this copy a copy of the decision of March 27, 1906 ?

A. It is really the one of the decision of March 27, 1906.

Q. 54. Are these copies authentic copies, delivered in accordance with the rules of French procedure ?

A. Yes, they are certified, they are signed by the Clerk of the Court, and the signature of the Clerk of the Court certified by the first President of the Court of Appeal of Grenoble. 2034

Q. 55. Will you annex them in support of your testimony and identify them ?

A. Here they are.

(The copies annexed by the witness are marked [Weiss] Exhibits 22 and 23).

Q. 56. Are the motifs of the decisions of December 12, 1905, and March 27, 1906, one with or are they not one with the dispositif, according to the theory which you 2035 have just developed, and do they participate or do they not participate in its authority ?

A. They certainly form one with the dispositif and hence they participate in the authority of *res judicata* which is attached to this dispositif.

Q. 57. Here is the dispositif of the decision of December 12, 1905 :

" Par ces motifs, the Court,—the counsel and attor-
" neys of the parties, having been heard as well as the
" Ministère Public in his conclusions, and after having 2036
" deliberated thereon, passing upon the second excep-
" tion on appeal raised by Rey, admits it, holds that
" the judge in chambers was incompetent, consequently
" annuls the order of February 15, 1905, for expenses
" of liquidation and advances, etc."

Putting aside the motifs, can this dispositif be understood, or not ?

A. It is absolutely impossible to understand it.

Q. 58. Under these conditions, do the motifs partici-

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pate or do they not participate in the authority of *res judicata* which is attached to the dispositif ?

A. They necessarily participate in it.

Q. 59. Here is the dispositif of the decision of March 27, 1906, passing upon the demand for interpretion of the decision of July 19, 1905, formulated by Mr. Lecouturier :

" Par ces motifs the Court, having heard the counsel " and the attorneys of the parties as well as the Minis-
2038 " tère Public in his conclusions and after having delib- " erated thereon without examining the demand of Le- " couturier in his official capacity, declares same to be " inadmissable, and orders him to pay costs, from " which a part is to be subtracted for the benefit of " Mr. Clément, attorney, who affirms that he advanced " them. Thus judged and pronounced—"

Putting aside the motifs which precede it, is this dispositif comprehensible or is it not ?

A. It would be utterly incomprehensible.

2039 Q. 60. Under these conditions, do the motifs on which a dispositif is based form one or do they not form one with the dispositif and do they or do they not participate in the authority of the dispositif ?

A. It appears to me certain that they form one with the dispositif and participate in the authority of *res judicata* of this dispositif.

Q. 61. Consequently the motifs on which the decision is based have the same authority as the dispositif itself ?

2040 A. I have no hesitation with regard to this.

Q. 62. Have you not already written out an opinion about the characteristics of the law of July 1, 1901 ?

A. Yes, I wrote out a consultation, on the date of July 26, 1905, if I am not mistaken.

Q. 63. Could you produce it ?

A. Here is a copy of it. I depose it in support of my deposition.

(The copy of the consultation deposed by the witness is marked [Weiss] Exhibit No. 24).

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Q. 64. I should like to put you some questions about the characteristics of the law of July 1, 1901. Is it or is it not a law of exception ?

A. It is evidently a law of exception

Q. 65. What are your reasons for declaring that it is a law of exception ?

A. My reasons, here they are :

A law of exception is a law that derogates from the common law, it is a law which disposes in a special manner with regard to such or such a citizen, or such 2042
or such a category of citizens. What is the common law in the matter of association ? This common law is the law of July 1, 1901, which formulates it to-day, the common law of associations is liberty. The law of 1901 repudiated all rules, all restrictive rules, all the annoying rules of the legislation of former times. Article 291 of the Penal Code, which forbade any association of more than 20 persons, under severe penalties, this article 291 is repealed today ; any association, no matter what the number of its members, can 2043
form by means of a simple declaration, for ordinary associations no authorization is necessary. This is the common law.

Well this common law received a breach when religious associations are in question. Religious congregations are placed outside of common law ; no liberty for them, a simple declaration for them is not sufficient, they must also or rather they should have an authorization, if, by a general measure all the authorizations asked for by congregations had not been systematically 2044
set aside.

Therefore, from the point of view of the conditions of formation of associations having a religious character, we have the right to say that the law of 1901 is a law of exception, because it makes a special régime, a particular régime for congregations.

It could be maintained and it has been tried, that in reality the law of 1901 remains, with regard to religious congregations, within tradition, within the old traditions of our law, as well of our monarchical law

2045 as of our revolutionary legislation. It is true. It is true, but it is not to the common law of formerly, it is not to the common law which as a matter of fact imposed rigorous conditions on every sort of association that one must look to to compare the situation which today is made for religious congregations in relation to other associations. It is to the common law of the present, to the liberal common law introduced by the law of 1901.

2046 Well, hence it matters little that legislations of the past showed themselves more restrictive for all associations, whatsoever. At the present moment all associations except the religious congregations, can freely form themselves, by means of a declaration, we have the right to say that from this point of view there is an exception, a derogation from common law.

But this is not all. It has also been said : when the legislator of 1901 apparently puts religious congregations outside of common law, in reality he remains
2047 faithful to common law as civil law has formulated it.

Civil law prohibits, annuls any convention, any judicial act of which the object is illicit, now the contract which is at the bottom of all religious congregations is necessarily based upon the relinquishment of the primordial rights of man. The religious congregation implies the vow of poverty, of obedience, of chastity. Well, all these vows are absolutely outside of commerce, they cannot be the object of a contract. Therefore, when the law of 1901 repels religious congrega-
2048 tions, it repels them in virtue of the general principles of civil law, because the contract, the contract of association which is at the base of the religious congregation affects objects which are not in commerce.

To that I reply that it is not true to say that the legislator considers as outside of business, the relinquishment of the primordial rights of which we have just spoken. So little does he consider them outside of commerce, not capable of being the object of a contract that the law of July 1, 1901, itself supposes that certain religious congregations might be

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authorized: the law of July 1, 1901, gives the procedure to be followed to gain this authorization. It supposes that there are, that there will be, that there can be authorized congregations, now the authorized congregations—the congregations which could be authorized have also at the basis of their statutes the three vows of which I have just spoken. The law therefore validates or admits that it could validate in certain cases the relinquishment of the primordial rights of men which are not in commerce.

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Therefore the law of July 1, 1901, furnishes us with an unanswerable argument to say that the general principle of the civil code cannot serve as basis to apply to religious congregations a particular treatment and to put them outside of common law.

Therefore no matter from what point of view one looks at it, either from the point of view of public law, or from the point of view of private law, we have the right to say that the law of July 1, 1901, is a law of exception.

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Q. 66. Is it or is it not a law of confiscation?

A. I need not protest about my respect for the legislator, by my very functions I am entrusted with teaching the law and the respect due to the law, therefore I shall not depart from this respect in replying to this question.

For me there is no doubt that the law of 1901 is a law of confiscation. It is a law of confiscation, here is why:—Well, I do not attach to the word "confiscation" the injurious sense that one might be tempted to attach to it. There are in the laws of numerous foreign legislations which I respect, measures of confiscation.

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I say that it is a law of confiscation, in this sense, that it results in the eventual dispossession of certain members of congregations, it results in the individual dispossession of certain members of congregations, of the fruit of their work or of the property that co-operation of their activity, of their initiative, of their energy had caused to enter into the patrimony of the

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congregation. And here is how this dispossession is realized:

The law of July 1, 1901, establishes for the benefit of the members of congregations affected by the new legislation the refunding of property which has come to them by succession in direct or collateral line, or by gifts or legacies, but when the property claimed by members of congregations has been given or bequeathed to them no longer in a direct line, that is to
2054 say no longer by their ascendants or their descendants, but by collaterals, the law obliges them rigorously, the law obliges them before any refunding, before any demand, to prove that they are not persons interposed in the sense of the law of 1901. There is here a negative proof by that fact very difficult, often even impossible to furnish. Well, when this proof of the non-interposition of a person has not been furnished, members of congregations cannot claim the property which has been given or bequeathed to them
2055 by a collateral.

In truth I wonder what name can be given to such a provision, is it not a veritable confiscation?

But that is not all. The law of 1901 also establishes that members of congregations deprived of means of existence or again those who, by their work, have given a certain value to the assets of the congregations, might receive assistance. But will this assistance be accorded to them unconditionally, will it be accorded to them as a right from the fact of their state
2056 of destitution or of the participation that they made to the property of the congregation?

Not at all—Before all it will be exacted that they trample on their past, that they cease to be members of congregations, that is to say that they break the vows that they had pronounced, that they renounce the religious vocation that they had embraced. Well, such a condition, that many, that the greater number of the members of congregations doubtless would not wish to fulfill, will entail as a consequence the refusal of all assistance to members of congregations who will

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refuse to comply with it. Is that not also a veritable confiscation ?

But there is more. One must suppose—the hypothesis is perhaps not very likely, but one can suppose —that after the liquidation, after the different assistances of which I have just spoken have been allotted, after the different claims and demands have been exercised, one can suppose that a balance remains.

To whom will it go ? It would be natural enough to think that it will go to the congregations, that it 2058
will be divided amongst the different members of the congregation, it would be natural enough.

It would be natural, but it is certainly not the idea of the legislator of 1901. It is apparent from the preparatory works, with almost absolute certainty, that the legislator intended to consider the balance of the congregational property, deducting the claims or the assistance of which we have spoken, as belonging to the State, as "*res nullius*", property unclaimed and
without a master, by application of articles 539 and 2059
713 of the Civil Code. That is apparent firstly from the examination of Mr. Millerand, who gave it to be understood that it was his personal opinion, and that is apparent, with incomparable authority, from the words pronounced by Mr. Trouillot, the rapporteur of the law to the Chamber of Deputies. Mr. Trouillot positively declared that for him no doubt was possible, that the property included in the balance should be attributed to the State. I think that this is also the
opinion expressed in the different commentaries which 2060
the law of July 1st, 1901, gave rise to, often with the authority of those who took part in the elaboration of the law—a most brilliant and direct part. I can name notably a book of Delasalle and Gustave Brunet, attorneys at the Tribunal of the Seine, and Edmond Duez, judicial administrator, preceded by a preface by Mr. Millerand. In this book, prefaced, as you see, by one of the principal authors of the law, it is said in the most formal manner that the goods should belong to the State.

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Q. 67. Will you if you please read us the principal passages ?

A. (The witness reading) :

" When all the claims admitted by article 18 have " been entered and paid, when the creditors of the 'in " rem versum ' have been indemnified, when the pen- " sions provided for the benefit of members of congre- " gations have been liquidated, to whom belongs, if " any exists, the balance deposited by the liquidator at
2062 " the ' Caisse des Dépôts et Consignations ' ? The " reply is inscribed in articles 539 and 713 of the Civil " Code, by the terms of which property unclaimed and " without a master belong to the State."

The reply is inscribed in articles 539 and 713 of the Civil Code, to which I myself alluded : it belongs to the State.

" So as to justify this— "

It seems to me useless to go any further, the affirmation is as clear as possible, property that is part of the
2063 balance belong to the State.

M. Barbancey : Page 232, edition of 1905.

Q. 68. In the preface which he wrote for this book did not Mr. Millerand himself say a word ? Did he not say :

" The distinctive trait of their commentary."

He speaks of the commentary that you have just brought us, that is so say " Les Congrégations non
2064 autorisees et leurs liquidateurs devant la loide 1901," by Francis J. Delasalle, Doctor in Law, attorney at the Tribunal of the Seine, Gustave Brunet, attorney at the Tribunal of the Seine, and Edmond Duez, judicial adminstrator at the Tribunal of the Seine, with a preface by Mr. Millerand—edited by V. Giard and A. Brière 16, Rue Soufflot and 12, Rue Toullier at Paris.

I read in the preface of Mr. Millerand :

" The distinctive trait of their commentary, its " value—some say its weakness—is as a matter of fact to " offer a methodical and coherent theory of the liqui-

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"dation, of a nature to satisfy minds anxious for order "and clearness."

Is what I have just read exact?

A. This passage is taken textually from Mr. Millerand's preface. Mr. Millerand consequently gives his adhesion, he has already done so in his article to—the attribution to the State.

Well I have the right to say, taking into account all these testimonies, the preparatory works, Mr. Millerand's opinion, the commentators of the new law, that 2066
this law institutes a veritable confiscation, since it must have for its object the attribution to the State of the property accumulated by the patient efforts of the congregations.

(The book is annexed marked [Weiss] Exhibit 25).

Q. 69. Is the law of 1901 a penal law or is it not?

A. If the law of July 1, 1901, is a law of exception, 2067
if it has the characteristics common to laws of confiscation as I think I have shown it to have, neither can one refuse to it the character of a penal law. It creates a new offence, the offence which consists in forming part of a non-authorized congregation, an offence punished by rigorous penalties by the new legislation: it is therefore a law having a penal character.

Q. 70. What are the consequences which result from the various characteristics of the law which you have 2068
just defined from the point of view of its application abroad?

A. From these various characteristics it results that its application is limited to French territory. The French legislator cannot have had the wish nor the ambition to make his principles cross the frontier and to associate foreign States in the application of a law which is necessarily for France, but which for abroad does not present the same degree of usefulness or of necessity.

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Q. 71. Could or could not a foreign tribunal be called upon to aid in the execution of a foreign law of exception or of confiscation?

A. For me it is certain that a foreign tribunal could not and should not aid in the application of the law of July 1, 1901. The law of July 1, 1901, on account of its exceptional character, of its penal character, expires at the the frontier of the French territory, it cannot be invoked on the other side of it, and a foreign tribunal,
2070 by helping it, would by that very fact transgress principles, perhaps very different ones on which are based the legislation in the name of which it itself renders justice.

I could besides give some analogies. It is evident that in France French tribunals would in no wise take into account the condemnation to civil death pronounced against a foreigner in a foreign country, in a country where the penalty of civil death were still in existence. It is certain that in France this individual,
2071 civilly dead in his country, would be considered as having all his rights, his estate would not be considered open for administration, French tribunals would refuse to associate themselves with the application of a penalty which today with us is considered immoral.

Q. 72. Do you know various judicial decisions rendered abroad on the occasion of the application of this law of July 1, 1901?

A. Yes, several decisions have intervened, two especially which in my eyes have an extreme import-
2072 ance. It is a decision emanating from the Tribunal of Buenos-Ayres, of which I possess a copy and a copy which is, I think, authentic, is it not? I annex the copy, I cannot depose the original, I annex the copy.

Q. 73. You certify it to be conform?

A. I certify it to be absolutely conformable to the official copy that was given to me.

Q. 74. This copy that you give to me is a sworn translation made by M. E. Billard, expert translator at the Court of Cassation, of a Judgment rendered by the Dr. Gaspard Ferrer in the suit brought by Mr. Henri

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Lecouturier, asking for the execution in the Argentine Republic of a foreign judgment.

Is the copy that you annex to your testimony conformable to the sworn translation which is there?

A. It is absolutely conformable.

Q. 75. Will you annex it?

M. PELLERIN: I object, as not being the best proof.

M. BARBANCEY: Can you leave the copy? 2074
Can you leave the original of the translation of the sworn translator?

A. No, I cannot.

Q. 76. Do you certify that the copy that you give is a copy conformable to the sworn translation?

A. I certify it.

M. PELLERIN: I maintain my objection.

M. WEISS: In what form should I certify? 2075

M. BARBANCEY: "Certified conformable" and your signature.

(The witness signs the copy, which is marked [Weiss] Exhibit 26.)

(The Witness): I can also invoke in the same sense a decision of the Federal Tribunal of Switzerland sitting as Penal Court of Cassation, at the date of February 13, 1906. These two decisions recognize that the law of July 1, 1901, presents a character contrary to 2076
the public order of the Argentine Republic, on the one hand, and of the Swiss Confederation on the other hand, and that hence it cannot be executed on the territory of these two States.

Q. 77. Can you, in support of your testimony, produce the copy of this decision of the Federal Tribunal of Lausanne?

A. Yes, I produce the printed and authentic copy of this decision of the Federal Tribunal.

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Q. 78. Will you also identify it by your signature?

(The witness signs the copy, which is marked [Weiss] Exhibit 27).

Q. 78*a*. Have you studied the various questions which you have just treated in the course of your examination, and have you written an opinion on these various questions?

2078 A. Yes, I wrote a consultation with the help of my learned colleague and professor M. Glasson, Dean of the Faculté de Droit of Paris.

Q. 79. Who is Mr. Ernest Glasson?

A. Member of the Institut de France, Dean of the "Faculté de Droit de l'Université de Paris", and Professor of Civil Procedure at this "Faculté".

Q. 80. Will you annex in support of your testimony the opinion that you wrote with the help of Mr. Ernest Glasson?

2079 A. I annex it.

(The opinion produced by the witness is marked [Weiss] Exhibit 28).

Q. 81. Do you certify that this opinion which bears the signature of Mr. Glasson—that this signature is really that of Mr. Glasson?

A. I certify it.

2080 M. BARBANCEY: I am now going to look for the passage of the deposition of M. Millerand—

Here is the passage of the deposition of Mr. Millerand to which I referred a moment ago, and which my honourable contradictor, Mr. Pellerin, appeared to doubt:

Examination of Mr. Millerand, session of May 14, 1906,—at question 37, put by Mr. Kelly, who, after reading over the considérants of the decision, finishes this reading in the following manner:

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"Am I to understand from this recital of
" facts that the ownership of the right of manu-
" facture and sale abroad was specially reserved
" when the sale was effected to the State in exe-
" cution of the law of expropriation?"

Reply of Mr. Millerand:

"That seems to me evident, and that, more-
" over, is the result from the very nature of the
" matter. The State bought from the match
" companies the least possible, it bought from 2082
" them what it had need of, that is to say their
" right of manufacturing and their marks in
" France."

Q. 82. Contrary to the affirmation of Mr. Millerand is it or is it not exact that the Compagnie Générale des Allumettes (General Match Company) was recognized by the decision of Paris owner of the marks in France?

A. The decision of Paris says nothing like that.

Q. 83. Does the decree of Paris order the General 2083
Match Company shall remove the marks Caussemille, Roche and others, in France as well as abroad?

A. The dispositif of the decision is absolutely formal in this sense:

"Consequently holds that within the four months of
" the serving of the present decree, the General Com-
" pany shall be obliged to remove from its trade-
" marks, from its match-boxes or other products, pros-
" pectuses and any advertisements, in France as well
" as in foreign countries, the names of Caussemille, 2084
" Roche, Four, Eydoux and Toussaint."

Q. 84. Is it therefore exact as Mr. Millerand pretended that the General Match Company which was the representative of the State, had the right to the exploitation of the marks in France?

A. It is quite inaccurate.

M. Barbancey: I have finished.

2085

SESSION OF SATURDAY, JUNE 30TH, 1906, at 2 p. m.

EXAMINATION OF MR. ANDRE WEISS CONTINUED.

Present: Parties as before.

BY MR. PELLERIN: In the first place I have to make an objection to the "Consultation of
2086 Mr. Weiss" being annexed, the American procedure not permitting a witness to testify otherwise than upon his examination.

I also object because this "consultation" (opinion) is signed by Mr. Glasson. The testimony of Mr. Glasson can only be taken upon examination and cross-examination.

BY MR. BARBANCEY: I again ask you, Mr. Weiss, whether you certify that the "consultation" (opinion) signed by you and by Mr.
2087 Glasson, was really signed by Mr. Glasson, "doyen" of the Faculty of Law, of Paris.

BY MR. WEISS: I certify that in the most formal manner.

BY MR. BARBANCEY: You affirm it on your oath?

BY MR. WEISS: I affirm it on my oath.

BY MR. PELLERIN: I maintain my objection.

CROSS-INTERROGATORIES BY MR. PELLERIN, representing
2088 the Defendant:

x-Q. 1. Will you give me your definition of a trade mark?

A. A trade mark, for me, is the individualization of merchandise or of manufactured goods. A trade mark is intended to prevent all imitation, all disloyal competition, to affirm the authenticity of the product.

x-Q. 2. What were the rights of a trader, as concerns the trade mark under common law, previous to the law of 1857?

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A. Before the law of 1857 the trader had the property of his trade mark exactly the same as after the law of 1857. The law of 1857 confined itself to establishing particularly energetic penal measures against those who would counterfeit a mark which had been regularly filed and registered, but the law of 1857 did not evidently intend to infringe the common law such as it existed before. It is Article 1382 of the Civil Code which protects all citizens against prejudicial frauds of which they may be victims on the part of 2090
others.

x-Q. 3. You just quoted article 1382: do you know a civilized country where article 1382 is not recognized?

A. I do not know of any. The principle of article 1382 dates back very far, it is the old theory of Roman law, known as the law "*Familiae*". This principle, to my knowledge, is met with in all legislations of the civilized world, it is a principle of natural law.

x-Q. 4. Then you do not know of a civilized country 2091
where the act of the man who does an injury does not oblige him by whose fault it happened to repair it?

A. I do not know of any.

x-Q. 5. Do there not exist certain principles of law which have always been recognized in all countries and during all times, and which today are recognized in all countries?

A. The question appears to me to be very broad and very vast. I think, in effect, I can affirm that at the basis of all legislations of civilized countries there are 2092
certain principles of common law, some say of natural law, which have been sanctioned by legislators under different forms, but which are always identical in themselves, under the different forms which they may have assumed.

x-Q. 6. Does not the right of a man to ask for reparation of an act which has caused him an injury enter into this catergory of principles?

A. That is my opinion.

x-Q. 7. Is the right of a man to ask for compensation

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from the person who has caused him a prejudice a personal right?

A. A personal right? I have not the right to ask a question? What do you understand by the word "personal"? The word "personal right" has a definite sense, it is opposed to the word "real right," it is the right which a person can avail himself of against another person with a view to obtaining the reparation of an injury, and to this personal right thus
2094 understood, real right is contrasted, which establishes an initial and real contact of form with the thing subject to this right. Is that the sense in which you wish to take it?

x-Q. 8. It is in that sense that I take it.

A. There is no doubt about this, the right to ask for damages constitutes a claim, that is to say a personal right.

x-Q. 9. Do the legislations of all countries repress fraud?

2095 A. "Fraud" is also a word which should perhaps be explained. Fraud if it is considered as a breach of good faith, as a deception, a trickery, a fraudulent manoeuvre, is repressed everywhere, either by civil legislation or by penal legislation.

M. Barbancey: I object. I did not wish to interrupt Mr. Weiss, but I had not Mr. Weiss called to make theoretical dissertations about law in general. We are considering trade-marks,
2096 I ask my adversary to specify his questions to what concerns trade-marks.

M. Pellerin: I am occupied with a cross-examination, I maintain the question.

x-Q. 10. Does not the use by a manufacturer, of a trade-mark which is the property of a rival constitute a fraud, and consequently, if fraud is repressed in all countries, is not fraud in all that concerns trade-marks also repressed in all countries?

A. When the use of a trade-mark by a rival

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constitutes a fraudulent manoeuvre, injures the rights of the manufacturer, does an injury contrary to good faith, it appears to me certain that this injury should be repressed.

x-Q. 11. You are the author of a "Précis de Droit International Privé" in three volumes, are you not?

A. In five volumes.

x-Q. 12. I read in volume II, page 316, the following passage:

"Besides what difference is there between the for- 2098
"eigner who does not fulfill the required conditions to
"effect the filing prescribed by law, and the French
"proprietor of a trade-mark that has not been filed?
"Both are excluded from the benefit of the law of
"1857, and nevertheless it has been repeated many
"times, at any rate for the latter, that the absence of
"filing does not prevent him from prosecuting before
"the civil jurisdiction. For the proprietor of a filed
"mark, the benefit of the present law, of the special
"guarantees which it institutes and of the actions 2099
"which it organizes, for the person who does not file,
"the common law. He will use his mark without being
"able to be dispossessed of it and he will ask for the
"means of defending himself against all disloyal com-
"petition from article 1382 of the Civil Code."

Is this really the reproduction of your idea and of what you have just said to me in reply to the preceding questions which I proposed to you?

A. Absolutely.

x-Q. 13. In all countries of the civilized world, a 2100
manufacturer whose trade-mark has been counterfeited has the right to ask damages from the counterfeiter. Can one say that the right to represent fraud in America is a right which can be separate from the right to repress fraud in France?

A. I do not very well understand your question.

x-Q. 14. Is it possible to say that the right to repress fraud in America, that the right that the proprietor of a mark has to take action against a usurper

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in America can be separate from the right that he can exercise to repress the fraud in France ?

A. It does not seem to me that the paraphrase that you have just given of your first question has made it clearer. I do not understand very well. You suppose a fraud committed in America, and you ask if the right of prosecuting the repression of that fraud can be separate from the right of prosecuting the repression of the same fraud before the French tri-
2102 bunals ?

x-Q. 15. I say this. I suppose a counterfeiter of a trade-mark in America and in France, and I ask if the right which the owner of the trade-mark has to ask for the repression in America is a right which is separate from the right which he has to ask for the repression in France ?

A. That appears to me certain. Wherever the fraud is committed, it should, it can be repressed. Is there a fraud committed in America ? It can be repressed
2103 according to the American law. Is a fraud committed in France ? It is prosecuted according to French law.

x-Q. 16. They are then two rights which seem to you separate ?

A. They appear to me separate.

x-Q. 17. In case of the counterfeiting of a mark, who has the right to prosecute the counterfeiter ?

A. The victim of the counterfeit, he who suffers directly by it.

2104 x-Q. 18. Do French decisions make a distinction between a transfer under voluntary sale or involuntary sale in matter of trade-marks ?

A. I do not know the state of the decisions on the question, I only know the decision of 1881 which was spoken of in the course of my examination, but the question was not put as to whether there was counterfeiting. I allude to the case of the Chemical Matches.

x-Q. 19. To your knowledge had not the decisions to pass upon the question of knowing what is the place of manufacture of a wine, the place where the wine is

2105

gathered or the place where it is made, and do you know the solution?

A. I do not know such decisions.

x-Q. 20. You know the volume of Pouillet "Traité des Marques de Fabrique et Concurrence Déloyale" (Treatise on Trade-marks and Disloyal Competition)?

A. Yes.

x-Q. 21. At page 461 I read this:

"The wine of a region famous for this sort of pro-
"ducts cannot, in our opinion, be designated under its 2106
"name except on the condition that it is both gathered
"and made there."

Is that also your opinion?

A. I have not gone into the question, but at first sight I see no objection to Mr. Pouillet's theory.

x-Q. 22. Do you know, in the "Annales de la Propriété Industrielle", volume of the year 1888, a decision Lacouture against Miquau, Judgment of the Civil Tribunal of Bordeaux of March 20, 1888, which says this: 2107

M. Barbancey: Objection. In order that the witness may pronounce upon decisions that are presented to him, he must know the case, he cannot pronounce a judgment on simply recitals.

M. Weiss: I indeed take the liberty of raising an objection: It is inadmissible that I should be asked: Do you know in such a volume of such a collection,—which contains 50 or 60 volumes—such and such a decision or such and 2108
such a judgment? I have not present in my mind, I beg your pardon for it, all the judicial decisions that have been rendered.

M. Pellerin: You might know it, that is why I asked you if you knew it.

M. Weiss: And that is why I beg pardon for my ignorance.

M. Pellerin (continuing): "The associates La-
"couture were proprietors of a vineyard known under

2109 " the name of Demesne of Guitot-Fellonneau. In
" these latter years a few detached portions of this
" domain were sold. M. M. Georges and Jacques
" Michau, purchasers of some of these portions, desig-
" nated under the name of Fellonneau the wine gath-
" ered by them. The associates Lacouture pretended
" that this was a usurpation of name and summoned
" M. Miquau before the Civil Tribunal of Bordeaux,
" which, on the date of the 11 of May, 1885, under
2110 " the presidency of Mr. Mougie Carsusan, rendered the
" following judgment:

" The Tribunal:

" Whereas the action taken by the associates Lacou-
" ture prays that M. M. Jacques and Georges Miquau
" be forbidden to stamp with the names of Fellon-
" neau, Fériclou of Fellonneau, the wines gathered
" upon the plots that were sold to them,

" Whereas according to the contract as reported by
" Mr. Mialaret, notary at Macon, under date of the 12
2111 " and 19 of April, 1874, the defendant and a M. Ray-
" mond purchased from Mr. and Mrs. Lacouture dif-
" erent parcels of ground planted with vines and situ-
" ated in the Commune of Macon,

" (Whereas) it is formally declared in the said
" deed that the real estate alienated forms an integral
" part of the domain of Guitot-Fellonneau,

" (Whereas) subsequently and according to the con-
" tract of the 26 March, 1883, Georges Miquau be-
" came the purchaser of the portion of the said estates
2112 " acquired in 1874 by M. Raymond,

" Whereas it is rational to admit that the wines
" should take their name from the soil that produces
" them,

" (Whereas) it matters little that at a very distant
" epoch the domain portions of which have been par-
" celled off by the aforementioned contract may have
" drawn its name from the proprietor who then pos-
" sessed it."—

And I ask you if the opinion expressed in these " attendus " reproduces Mr. Pouillet's opinion?

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A. It is a decision which appears to me to apply to the particular case. When the fabrication of wine is in question it is certain that the soil plays a big part. Wine derives its elements from the soil, from the exposure to the sun, from all sorts of circumstances which indeed are of great importance, but this decision seems to me absolutely special to the case in question, of a crop of wine.

x-Q. 23. Perhaps you know a case Syndicate of Champagne Wines versus Lécluse? It is a judgment 2114 of Angers, of the 19 of July, 1887.

A. I think I have heard of this case. It is not a judgment.

x-Q. 24. A decision; I beg your pardon. I am going to read it to you.

"THE COURT: Whereas contrary to what the first "judges admitted, one cannot consider the designation "of Wine of Champagne, or that of Champagne, as "applicable to all sparkling wines in general, and as "consequently being applicable to sparkling wines 2115 "made at Saumur;

"Whereas this designation applied to the latter "wines is as deceptive and false as if it were given to "the sparkling wines of Anjou to those of Saint-Peray "and others, even if the methods of fabrication of the "different sparkling wines were everywhere the same, "that which is far from being demonstrated;

"Whereas the word "Champagne", in short, is indi- "cative both of the place of production and of fabrica- "tion of certain wines especially known under this 2116 "qualification and not under others; (whereas) it mat- "ters little that the wines of Champagne be not purely "natural wines, like the wines of Bordeaux or of "Burgundy, for instance; that they do not derive their "qualities solely from the soil that has produced "them, and that they acquire a part of these qualities "from a special method of preparation and handling, "since the law of the 28 of July, 1824, is mainly "directed against the false indication of the place of "fabrication;

2117 "Whereas it does not matter either that certain "manufacturers, even of Marne can put into their vats "wines bought by them elsewhere than in the ancient "province of Champagne, or that sparkling wines "made in foreign countries be sold under the name of "wines of Champagne; for indeed one abuse cannot "justify another abuse;

"Whereas, therefore since the designation Cham- "pagne or wines of Champagne has not been able to
2118 "become public property as applying to sparkling "non-Champagne wines;

"Whereas the application in the terms of the law of "1824, of this designation to sparkling wines other "than those of production and fabrication in Cham- "pagne, constitutes not only an abuse, but an offence, "and cannot consequently be generative of a right;

"Whereas the responsibility edicted by the said law "can be invoked both by the purchaser deceived about "the place of origin of the wine sold and by all those
2119 "who find themselves injured in any manner by the "false designation employed notably by manufacturers "victims of disloyal or illicit competition; (whereas) "indeed this law in keeping in view article 423 of the "penal code, expressly and in a general manner re- "serves the rights to damages;

"Whereas in fact it results from the documents of "the case that Lécluse put and puts on sale, under the "designation of Champagne and of wines of Cham- "pagne wines which are not originally from Cham-
2120 "pagne—

"For these reasons,—

"Forbids Lécluse to affix the words Wines of "Champagne or Champagne or any one of the names "of the vintages of Champagne on sparkling wines not "coming from this country or only partly coming "from it"—

Does the opinion set forth in this judgment correspond well with the opinion which I quoted to you in Mr. Pouillet's book a moment ago?

A. This opinion also appears to me to suit a crop of

2121

wine. The case was about wine of Champagne, and the decision takes great care to state that it is about a wine produced and made in Champagne. The production, that is to say the localization of a product plays a large part in the decision of the Court. It not only takes into consideration the place where the fabrication of the wine has been made but also the place where the grape has grown, where the wine has been produced. It is about a wine both produced and made in Champange; under these conditions one understands that 2122
the Court reserved the name of Champagne to wines fulfilling this double condition of production and fabrication in the ancient province of Champagne.

x-Q. 25. I am going to read you another decision from the Gazette du Palais of 1889, page 624, a decree of the Court of Angers of the 11 of April, 1889, Veuve Heidsieck & Co. and Syndicat du Commerce des Vins de Champagne versus Tessier:

"Whereas indeed one can only understand by
"Champagne or wine of Champagne, contrary to what 2123
"the correctional Tribunal of Saumur decided, a wine
"both grown and made in Champagne, an ancient
"province of France, geographically determined,
"and whose limits cannot be extended or restricted;
"(whereas) this interpretation is comformable to that
"of the Court of Cassation which, in its decision of
"the 12 of July, 1845, expressed itself thus: 'Wines
"of Champagne are manufactured products, and the
"places where they are gathered and where they are
"prepared, places of fabrication'; (whereas) it fol- 2124
"lows from this that a manufacturer of these sorts of
"wine, to put himself out of reach of the possibility
"of correctional or civil penalties, must necessarily
"make them in the region known under the name of
"Champagne, and not use for the fabrication other
"grapes than those produced by the vines of the said
"region—

"Holds that the expression Champagne or wine of
"Champagne can only designate a wine gathered and
"made in Champagne"—

2125

Is that again the expression of the opinion of Mr. Pouillet ?

A. It seems to me that this decision is absolutely conformable to the one preceding which you quoted to me.

x-Q. 26. You are the Director of the "Pandectes Françaises," are you not ?

A. Yes.

x-Q. 27. You said, in your last deposition, that in
2126 your opinion Mr. Lyon-Caen was wrong when he declared that the right to the trade-mark constituted a personal right ?

A. It is my opinion very decidedly.

x-Q. 28. Can you quote me a decision which holds that the trade-mark is not a personal right ?

A. I have not present in my mind either decisions or judgments rendered in this order of ideas, but I do not think that any can be quoted th at invalidate my manner of viewing (the case). I know that the ques-
2127 tion is vigourously discussed between authors ; Mr. Lyon-Caen is in one camp, and I in the other, and I think that neither one nor the other of us is alone.

x-Q. 29. If the right to the trade-mark is not a personal right is it a real right ?

A. It is not a real right, it is a personal right without any doubt.

x-Q. 30. Since you are the director of the "Pandectes Françaises," you must know article 1532 of Volume 40,—No. 1532—which says :

2128 " The principle of the 'statut personnel' concerning
" the status and the capacity of persons, has been im-
" posed in international law, by the very force of circum-
" stances, climate, race, customs do not allow of the
" laws which regulate the status and the capacity of
" persons being identical among all peoples. From
" this point of view the unification of legislations is
" and probably always will be unattainable. It is
" rational and even indispensable that a foreigner,
" away from his country, should continue, from the
" point of view of status and capacity, to be governed

2129

"by his national law. It follows him wherever he "may go. Whilst being a palliative to divergent "legislations, the principle of the 'statut personnel' "prepares their unification."

M. Barbancey: Will you allow me Mr. Pellerin—You must have the text. Will you give it to the witness so that he may read it?

M. Weiss: May I ask to what word you are referring? 2130

M. Pellerin: To the word "Trade-marks."

M. Weiss: I take the liberty once for all of declaring that being director of the "Pandectes Françaises," I have not the responsibility of all the opinions expressed in the course of the 59 volumes that have appeared. I am the director, that is to say that I go over the work of my fellow workers, but there are opinions, above all about civil law, often contrary to mine, I respect the opinions of my collaborators without 2131 endorsing them.

M. Pellerin.—I continue the reading of article 1532:

"In matters of trade-marks it answers to the same "needs. It is natural that a manufacturer to consti- "tute his marks, should obey the law of the country "where he has established himself. The greater part "of the time he is ignorant of the foreign laws. "(Whereas) if afterwards his products pass the 2132 "frontier, and his mark needs the protection of foreign "laws, he must not be deprived of it on account of the "very elements of which it is composed. Conse- "quently, on condition that such mark be legally "formed in its country of origin, it should be accepted "as it is in foreign countries. Besides, the differ- "ences which the laws on the trade-marks of different "countries offer being likely to be attenuated and to "disappear, the principle of the 'statut personnel' is "the surest factor of the unity of legislations. Such

2133 " and such a category of signs which in one country,
" the natives cannot appropriate will be protected in
" the interests of foreigners; the experiment which
" will thus be made of the aptitude of a sign not re-
" ceived as a mark, to distinguish products, and also
" the natural propensity which will make one inclined
" not to give to foreigners, vis-à-vis of the natives a
" privileged position, will promptly bring about this
" result that, in all countries, this category of signs
2134 " will be recognized as a Mark. Set forth in several
" particular treaties between France and various
" foreign States, the principal of the 'statut person-
" nel' of the mark has found its formula in article 6
" of the Convention of the Union of March 20, 1883:

" Every mark regularly filed in the country of
" origin, will be admissible to filing and protected, as
" it is, in the other countries of the Union".

What I have just read is really the reproduction of what you have before your eyes?

2135 A. It is really the reproduction of No. 1532, "Trade-Marks".

x-Q. 31. How do you reconcile your theory on trade-marks, as you have exposed it, with the theory enunciated here, in the Pandectes Françaises, of which you are the director?

M. Barbancey.—Objection, I beg my adversary to quote the theory enunciated: I do not see that the witness has said anything to
2136 the contrary.

A. I do not see it either, and I say that even if a contradiction did exist, this contradiction could not be used against me, considering the observations I have just made and the complete independence that my collaborators enjoy in the composition.

x-Q. 32. I take the beginning of Mr. Weiss's deposition, reply to question No. 9, and I read this:

" I have a great respect for the opinion of my col-
" league and friend M. Lyon-Caen, but about the point

2137

" in question my opinion is diametrically opposed to " his. Mr. Lyon-Caen starts from this thesis, one which " is according to me absolutely contestable and often " disputed, that the right to the mark constitutes a " personal right, that it is in a way the individuali- " zation of the person of the manufacturer or " of the merchant, whilst, on the contrary, according " to me and according to the opinion which appears to " me to prevail, the mark is rather the exteriorisation " of the merchandise, of the merchandise which it in- 2138 " dividualises and distinguishes from similar mer- " chandise. Mr. Lyon-Caen thinks, that it is a personal " right, and that, as a personal right, as soon as the " frontier is crossed this right subsists still uniform " and identical. Well, that is where, lies according to " me the error of my learned colleague."

Such is the opinion of Mr. Lyon-Caen. To your mind does Mr. Lyon-Caen's opinion resemble the opinion quoted in No. 1532 of the " Pandectes Françaises " ? 2139

A. I see no contradiction between the opinion set forth in article 1532 of the " Pandectes Françaises " and my personal opinion.

x-Q. 33. That is precisely the question that I put to you. I ask you : Is there a contradiction, and if there is one, can it be explained ?

A. I see no sort of contradiction. Note that in the theory that I have always upheld,—and of which I was, I think, one of the promoters in France, in all private international law I consider that every law by its 2140 essence is a personal law. It is personal in this sense that it is made for the individual ; even when it applies to property it is made for the individual, to provide for his needs, to take care of his interests. But beside the personal law, which applies to the person, to the exterior manifestations of the person, even when in relation to property, opposite this personal law there are real laws of different States which can prevent the extra-territorial application of the personal law. Property has a material centre, real property is

2141 situated in such or such a country, personal property is here or there, even incorporeal property itself, the debt or trade-mark can have its seat in such or such a country. The personal law of the proprietor of this property, this personal law will find itself arrested, paralysed by the local law which will not allow of the principles on which it rests being infringed.

I see no contradiction between the view expressed in article 1532 and the view which I set forth in my
2142 opinion.

x-Q. 34. Does not one find in article 6 of the Convention of the Union of March 20, 1883, precisely the principle of the "statut personnel" of the mark, as is said by the writer of No. 1532?

A. I am not of that opinion. Article 6 of the Convention of the Union of March 20, 1883, as I think I expounded it in the course of my preceding examination, article 6 of the Convention of 1883 limits itself to establishing a régime of favour for the benefit of cer-
2143 tain marks. When a mark has been filed in the country of origin, it should be accepted as it is, in the countries parties to the Union. It is in the protocol of the closing that one must look for the veritable bearing of article 6. That means: in the form in which it has been registered in its country of origin. But the unionist countries parties to the Union did not intend to renounce the absolute right of governing the marks which are imported into their territory by the principles themselves of their own legislation. The proto-
2144 col of closing appears to me formal in this sense; there is a word "provided that" to which I alluded which shows very well that the provision of article 6 of the Convention of March 20, 1883, is a provision of favour, a provision which consequently leaves out common law. Well, common law is that every State has the right to govern to rule the marks invoked on its territory by the rules of its own legislation.

x-Q. 35. I now direct you to article 1533 "Trade-Marks" of the same "Répertoire," and I read this:—

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The author of this article quotes with approbation a passage of Mr. Pouillet:

"According to Mr. Pouillet's expression, the con-
"vention of the Union, by attaching itself, in order
"to determine the legal character of the mark, to the
"law of the country of origin, has, by that itself,
"recognized and constituted the nationality of marks."

I ask you: how do you reconcile this opinion with the one you expressed in reply to question 29 of your [direct] deposition, which I re-read to you? 2146

A. I would have you observe that Mr. Pouillet is precisely in the front rank of the adversaries of our doctrine, that he belongs to Mr. Lyon-Caen's camp. He is the adversary of the territoriality of trade-marks, he is partisan of the "statut personnel" and of the mark considered as a personal right. Consequently you can with difficulty oppose to me an opinion which is that of my adversaries.

x-Q. 36. You said, in your preceding deposition, that there was analogy between a debt and a trade-mark, 2147 and you say that a foreign debt is foreign property. That is really your opinion?

A. What do you understand by a foreign debt?

x-Q. 37. The right that a French creditor has over a foreign debtor. You consider this right foreign property?

A. I consider that from the point of view of international law there is indeed an advantage in attributing a situation to debts. This situation evidently cannot be determined in the ordinary conditions; debt being 2148 a relation of law, an immaterial thing, an intangible thing, cannot have a situation properly so called, it is not like personal (un memble) property (un fond de terre) real estate, a house, —or analagous to that of a corporeal property. Therefore, in order to localise the debt in the case a situation must be assigned to it. What can it be? The only means of discovering it, is to consider the place where the creditor derives material advantages from his claim. Now in what place does a creditor benefit by his claim, does he derive a

2149

material profit from his right? Evidently in the place where the debtor will pay him. If therefore the contrary is not stipulated, or even in the absence of the Conventions, it is at the domicile of the debtor that the payment of the debt should take place; the debt will be considered as situated at the place of his domicile, for it is there that the material advantages of the debt will be realized to the advantage of the creditor.

2150 x-Q. 38. You know the "Droit Civil International de Laurent"?—I read in volume No. 7, page 232, No. 172,—it is in the chapter entitled "on property and on the statut reél":

"We pass on to incorporeal property. Can it be "said of rights that they have any situation whatso- "ever real or fictitious. Incorporeal property has a "situation although it is not a fixed one, it can there- "fore be supposed that it has another situation, that "of the domicile where the proprietor can always
2151 "transport it. But does one transport rights? The "old authors do not raise this question, all agree in say- "ing that rights follow the person. In truth everything "is fiction in this matter. Can one say of a right that "it is personal property, that is to say that it can be "transported from one place to another? Neither "can one conceive that rights have a determined place "in space.

"Let us accept all the fictions, they do not put an "end to doubt, far from it they raise another one.
2152 "Personal rights follow the person, be it so, but which "person?

"There are two in the obligation: the creditor "and the debtor. Does the right follow the person of "the creditor or that of the debtor? Dumoulin "replies: 'Rights and all incorporeal things have no "place, it cannot therefore be said that they exist "here rather than there. Neither are the rights at- "tached to the person of the debtor, one should rather "say that they follow the person of the creditor, for,

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" as is generally said, they are inherent to his bones : " *ossibus ejus inhoerent* '."

" Story quotes this passage of Dumoulin to establish " that according to tradition the debt is governed by " the law of the domicile of the creditor."

Therefore authors are not unanimous about the point of knowing what is the place of the situation of a debt ?

A. No, controversy has taken place but the opinion that prevails is the one that I have just indicated to 2154 you.

x-Q. 39. Could you cite other authors besides yourself who have this opinion ?

A. I could not cite any name for the present, not being prepared for the question but I think it is the general opinion.

x-Q. 40. What definition do you give of the words " French Property " ?

A. The words " French Property ", according to me, designate all those which are subject to the action of 2155 French law, and are situated either materially or fictitiously in France.

x-Q. 41. I suppose that an American has bought merchandise belonging to a French person and that he has never paid for it. Would the right to recover this merchandise be a French property ?

A. An American has bought merchandise from a French person, merchandise which is in France ?

x-Q. 42. Exactly.

A. This American has not paid for the merchandise 2156 that has been sold to him. Will the right to exact payment, that is to say the right which belongs to the seller be a French property ? As for me, I consider that it will be an American right, an American property, since the debtor—evidently you speak of a debtor residing in America—since the debtor has the seat of his affairs in America, since it is in America that the French creditor will have to take action against him to get the payment, that it is in America that the payment will have to be

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exacted and will be made, it appears to me evident that the right has its material situation in America, that it is, consequently, an American property.

x-Q. 43. In this case which we are supposing, would not the Frenchman have the right to prosecute the American in France, and to obtain judgment against him ?

A. This is a question of competency very distinct from the one of a moment ago. It is true, there is in
2158 the civil code a particular provision, a rigorous, exceptional provision, the provision of article 14, which allows a French creditor to sue a foreign debtor before a French tribunal without concerning himself about the domicile. But it is an exorbitant provision of common law, severely criticised, and whose revision has long been asked for : indeed more than one bill has been brought forward in the Chambre des Députés. It is probable that the rule of article 14 will not live very long, but I do not think that it has the least con-
2159 nection with the question that you submitted to me.

x-Q. 44. This judgment that we are supposing would be a French judgment ?

A. It would be a French judgment.

x-Q. 45. Could it be said that this French judgment would be foreign property, or should it be said that it is French property ?

A. The question appears to me odd, I never heard of a judgment being a property.

x-Q. 46. The rights, if you like ?

2160 A. The debt resulting from the judgment would not be a French property because the payment of what is due would have to be prosecuted and exacted in America. The French holder of the judgment should present himself before an American jurisdiction and ask for the exequatur for the French decision, exequatur which he would probably be refused, because American jurisdictions, as all foreign jurisdictions—we have numerous examples of it, in Italy particularly—refuse to give the exequatur to a decision based upon the

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exceptional and exorbitant provisions of article 14 of the Civil Code.

x-Q. 47. Could you cite for me the case of a French manufacturer having acquired for his trade-mark a value by his manufacturing in France, and having sold this trade-mark in a foreign country, to a foreigner? Do you know of any such case?

A. I do not know a situation of this sort but it seems to me that it must be met with. It is a simple question of will. He who sells his business can perfectly well sell at the same time the trade-marks which individualize the product: it is a matter of agreement. 2162

x-Q. 48. If Moet and Chandon, who make a wine of champagne in France, sold to an American, Mr. Jones, the right to use their trade-marks in America for wines gathered and made by him in America, do you think that this sale would be licit?

A. I do not know what the French tribunals would decide. It is possible that they would refuse to recognize a licit character in this simple alienation. 2163 Perhaps they would consider that as it was about a wine, the place of production and the place of fabrication must be together, since it is about a natural product of the soil. However about this I have no data, I do not mean to pre-judge the decisions of jurisprudence.

x-Q. 49. Would not, in truth, such a sale make the American public think that the wine made by Mr. Jones in America, was gathered and made by Moet and Chandon, at Epernay? 2164

M. Barbancey: Objection. I beg my adversary to argue about the subject that concerns us, and not about wines.

A. There is, in truth, a difference which I have often emphasized, a difference in the case—

x-Q. 50. I maintain my question and I beg Mr. Weiss to answer me.

A. I reply as I did a moment ago, that being about

2165 a wine, the solution appears to be very different than for a liqueur, since it is about a wine that is to say a natural product. Now the question that you put to me might be submitted to American tribunals, they might consider that in this mark there was something deceptive, the purchaser of this wine might imagine that it was a wine of Champagne, that is to say produced by the hills of Champagne, and he might find himself deceived if in reality this mark covered quite a
2166 different product.

x-Q. 51. In your preceding deposition, you called the law of 1901, a law of confiscation ?

A. In truth, I did use this word " confiscation ", without however attributing to it the injurious sense which is attributed to this word. For me every law can perfectly well ordain confiscation in certain cases.

x-Q. 52. What was the legal situation of religious associations before the law of 1901 ?

A. Before the law of the 1 of July, 1901, religious
2167 associations enjoyed *de facto* a tolerance which I hasten to say had nothing legal in it.

x-Q. 53. Before the law of July 1, 1901, had religious associations the right to be proprietors ?

A. Authorized associations could be proprietors, those that were not authorized could not in the legal sense of the word.

x-Q. 54. Then non-authorized associations had not the right to be proprietors ?

A. The associations not legally authorized could not
2168 be proprietors because they had no personality.

x-Q. 55. If authorized associations had a trade-mark and if they had not the right to be proprietors, to whom did the trade-mark belong ?

A. You are speaking of non-authorized congregations ?

x-Q. 56. Non-authorized.

A. The trade-mark could be exploited by one of their members, the non-authorized associations constituted at any rate a society *de facto*.

x-Q. 57. Their situation was not legal ?

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A. It was a situation that was not legal, but jurisprudence has for a long time admitted that societies *de facto* could enjoy to a certain extent the benefits of legal existence.

x-Q. 58. Before July 1, 1901, the Congregation of the Carthusians was not proprietor of property in France since it was not authorized ?

A. It was not proprietor.

x-Q. 59. What did the law of July 1, 1901, deprive the Congregation of the Carthusians of ? 2170

A. The Congregation of the Carthusians ceased to benefit by the tolerance that it had hitherto enjoyed consequently the rights that it had exercised under the complaisant eye of the law could no longer be exercised.

x-Q. 60. You speak of rights that the Congregation of the Carthusians exercised before the law of July 1, 1901. Now you have told me that non-authorized congregations were not legally recognized. How do you reconcile these two replies ? 2171

A. I told you, it is true, that the Congregation of the Carthusians had no legal existence. But the members considered individually had one, and the members could exercise certain rights.

x-Q. 61. I do not speak of the Carthusians in particular, I am speaking to you of the Congregation of the Carthusians, and I say this to you : If the Congregation was not proprietor of property in France, what did the law of July 1, 1901, deprive it of ?

A. The law did not deprive the Congregation of 2172 Carthusians of property which it had not, but it put religious associations, and that of the Carthusians among others, outside of the common law instituted by the legislation of 1901.

x-Q. 62. Then, speaking of the Congregation of the Carthusians, can it be said that the law of July 1, 1901, should be called a law of confiscation, since if the Carthusians were not proprietors of property in France before the law, one cannot understand what the law deprived them of ?

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A. It is not the Congregation that was despoiled by the law, it is the Carthusians considered as individuals, members of the *de facto* society which existed *de facto* among the different members of the Congregation.

x-Q. 63. To whom did the trade-mark of the Carthusians belong ?

A. The trade-mark of the Carthusians belonged nominally to the Abbé Rey. A decision of the Court of Grenoble decided that the Abbé Rey was a person
2174 interposed by the Carthusians.

x-Q. 64. You said, in your preceding deposition, that it could be said that the law of 1901 was a law of exception, because it made for the congregations a situation apart. Can you tell me where you find that in the law ?

A. But its exceptional character is obvious. The law of 1901 had for its object—its authors took care to declare it—to proclaim the liberty of associations. It was a conquest that had been pursued for a long time,
2175 called for, for a long time, the law of July 1 realized it. Henceforth associations are free, they are withdrawn from the irritating régime of the anterior legislation, article 291 of the penal code, which punished any person belonging to a non-authorized association of more than 20 members was abolished, consequently liberty becomes the rule, liberty becomes common law ; any person may associate himself with other persons, no matter what the number of persons to whom he wishes to join himself, any person can asso-
2176 ciate under the sole reservation of making a declaration, therefore an authorization is not necessary. But this common law which is that of every French citizen does not exist for religious congregations, congregations will not benefit by the new liberty, they are submitted to the régime of authorization, an authorization is necessary in order that several persons may unite and found a religious association. There is certainly here something exceptional, an infringement of common law, something that is not exacted from private people and to which those who wish

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to pronounce religious vows are obliged to submit. And, moreover, this religious character found itself singularly aggravated in fact by the systematic refusal opposed by Parliament to all requests for authorization coming from religious congregations.

I therefore have the right to say, and I repeat it, that the law of 1901 is a law of exception; besides common law, which is liberty, it has created a special exceptional, particularly rigorous, régime for a whole category of French citizens.

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x-Q. 65. Does any association whatsoever, an association in the terms of the law of July 1, 1901, but other than a religious association, find itself in the same situation, from a legal point of view, as a religious congregation under the terms of the law of 1901?

A. No, there exists a great difference between ordinary associations and congregations, and this difference appears precisely in what I have just said. It can form itself after a declaration which gives it a restricted 2179 personality, but sufficient to allow it to work and to act, whilst religious congregations, being under the régime of authorization, cannot form themselves freely.

x-Q. 66. What is the vow of poverty?

A. It is the vow that members of congregations pronounce on their entry into orders, a vow consisting in renouncing the goods of this world.

x-Q. 67. Any person who enters a religious congregation, by the vow of poverty, renounces the right to 2180 possess?

A. I take the liberty of pointing out that these are theological or ecclesiastical questions about which I have not sufficient light. I do not know exactly what the vow of poverty entails, never having pronounced one for my part.

x-Q. 68. Do members of religious congregations renounce being proprietors when they enter a congregation?

A. I think so. I have not the formula of the vow

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that the members of a congregation pronounce when they enter orders.

x-Q. 69. Neither do I ask for the formula of this vow. Do people belonging to an association other than a religious congregation in the terms of the law of July 1, 1901, renounce the right of possessing?

A. Persons belonging to an association other than a religious congregation?

x-Q. 70. Exactly.

2182 A. Certainly not. There is there a doubling of the personality, so to speak; each associate brings to the association a part of his individuality, but each person preserves outside of this association all his individual rights.

x-Q. 71. Can a Frenchman deprive himself of the right of ownership, according to the Civil Code?

A. A Frenchman cannot deprive himself of the right of proprietorship, and, nevertheless, he could not, in a general manner, declare that he will never be pro-

2183 prietor, or rather this declaration would be abandoned to his free will, it will not be sanctioned by law. A Frenchman has the right not to acquire property and to behave himself all his life through as though bound by the vow, the oath that he might have taken *vis-à-vis* of himself, but the law will refuse him the sanction of its tribunals.

x-Q. 72. Then a vow is contrary to law?

A. A vow is not contrary to law, the law does not sanction it, it ignores it.

2184 x-Q. 73. The law admits that in certain cases the abandoning of the primordial rights of man can be validated?

A. One would first have to agree about what the primordial rights of man are.

x-Q. 74. Let us speak of the right of ownership only.

A. Well, the law admits in certain cases that property may be rendered inalienable, that certain property may be put outside of commerce, may be withdrawn from negotiations and transactions of which they

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might be the object. The law also admits of one making a vow of poverty since the law of 1901 had provided that religious congregations could be authorized, congregations which have at their basis the vow of poverty of which we were speaking a moment ago. The law of July 1, 1901, provided the possibility of authorisation for certain congregations; now, all congregations whatsoever, those that are still authorized just as much as those that might have been, impose the vow of poverty. The law has therefore given its 2186
sanction, at least an indirect one, to such a vow.

x-Q. 75. Parliament has the right to modify the article of the Code which prohibits the vow of poverty?

A. There is not, in the Code, an article which prohibits the vow of poverty. There are certain articles, like article 6, article 1131, article 1133 of the Civil Code which forbid conventions contrary to public order or having an illicit cause, but nowhere does the law say, that I know of, that the vow of poverty is forbidden; it is for the courts to interpret its pro- 2187
visions and to see what are the particular conventions what are the acts, legal, illicit, or contrary to public order.

x-Q. 76. I modify my question. Has Parliament the right to modify the principles which would result from certain articles of the Civil Code and which would forbid the vow of poverty?

A. Evidently, what one Parliament does, another one can un-do.

x-Q. 77. Consequently, the law can perfectly well 2188
authorize congregations where there is a vow of poverty?

A. Doubtless.

x-Q. 78. It did not do so?

A. Yes it did, the law of 1901 recognized that religious congregations could be authorized, therefore the law of 1901 recognized in this way that the vows upon entering all religious congregations have nothing illicit, it doubtless considered that it was a question of conscience.

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x-Q. 79. In your preceding deposition you said that those could be attributed to certain motifs, certain ones of the motifs which you qualified as objective motifs, the authority of *res judicata* did you not ?

A. Yes.

x-Q. 80. I am going to read to you, in volume 17 of the Pandectes Françaises at the word "chose jugée" *res judicata* article 320 :

"The rule of *res judicata* does not attach to the
2190 "motifs of judgments, but to the dispositif alone. The "fact that the Judges have examined a point of the "argument and have expressed their opinion thereon "in the motifs does not suffice to render operative the "rule of *res judicata* on this point, a subsequent de- "cision can very well contradict this opinion."

Follow a certain number of decisions and jugdments.

Are decisions unanimous as to whether the motifs of a judgment constitute the authority of *res judicata ?* —whether the objective motifs of a judgment or
2191 whether the dispositif of a judgment alone constitute the authority of *res judicata ?*

A. The principle appears to me to have been very firmly established by a decision of the Court of Cassation of 1869, which I think I indicated in my opinion ; this decision of 1869 affirms in the most energetic manner that the motifs of decisions on appeal may have the authority of *res judicata*, when they form one with the dispositif and serve to explain it.

Upon the principle there can be no hesitation : the
2192 rule of *res judicata* does not belong "*de plano*" to the motifs, but when they form one with the dispositif, when the dispositif could not be understood without the motifs, these motifs, whatever their place may be, participate in the authority of *res judicata*. On this point I quote for you the decision of 1869 and I could quote a long series of subsequent decisions which have done nothing but uphold and develop this rule.

x-Q. 81. Could you state precisely the date of this decision of 1869, if you have it ? I looked for it and did not find it.

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A. It is indicated in my opinion annexed to the commission, I have not preserved the notes of it. It would be easy for me to find it again.

M. Barbancey : Mr. Consul, will you let me have the opinion of M.M. Weiss and Glasson, annexed in the course of the last examination ?

(The Consul gives the consultation to Mr. Weiss, who looks for the date in question.)

M. Pellerin : In order to spare you these researches, I see in number 378 of the Pandectes Françaises a decision of the Court of Cassation— 2194

M. Weiss : Here is the date : 28 June, 1869.

x-Q. 82. Which is recorded in Dalloz, 71, 1, 223 ?

A. 223.

x-Q. 83. I put this decision before you. Will you tell me the phrase upon which you ground your assertion that you see that the question has been decided in what concerns the question of the objective motifs of a judgment ? 2195

A. (M. Weiss reading) :

" On the first and second exceptions, Whereas after " having annulled, as irregular and incomplete, the " partial appraisement undertaken by Biteau without " the presence of Rouzeau, the decision which is " attacked confines itself to ordering a new appraise- " ment which must include, conformably to the judg- " ment of September 30, 1867, all the buildings let to " the couple Petit, 2196

" (Whereas) such a decision does not affect the issue " already decided, which applied to one single ap- " praisement ordered between the three parties to the " action, and it in no wise modifies the situation which " resulted for each of these parties ;

" Whereas, if some of the motifs of the decision " on appeal seem to pass upon a point of law decided " by the judgment of 1867, these motifs, which are in " no wise necessary to uphold the decision, do not con- " stitute the *res judicata*, which can only result from

2197 " the dispositif and such motifs could not therefore " bring about the reversal of the said decision ;

" Whereas on the other hand it is in no wise " decided by the decision attacked that there " existed any particular legal relationship be- " tween Rouzeau and Biteau, (whereas) the " decision confines itself to deciding, which, " besides could not be seriously contested, that inde- " pendently of all relationship of this kind between
2198 " him and the sub-tenant, the proprietor always has " the right to evict the latter at the expiration of the " principal lease ;

" Whereas these considerations taken as a whole " necessarily determine the overruling of the exception " raised as to the application of the rule of *res* " *judicata*, the Judges in first instance do not need to " state more explicitly the ' motifs ' of their decision " in order to satisfy the provisions of article 7 of the " law of April 20th, 1810."

2199 Well it seems to me that it follows from this decision that if the motifs of a decision do not enjoy the authority of *res judicata* when they are separate from the issue to be decided, from the dispositif, they have on the contrary the authority of *res judicata* when they determine this dispositif.

x-Q. 84. In your opinion this decision of Cassation absolutely decides the question ?

A. This decision appears to me to decide the question. Now, I confine myself to quoting this decision,
2200 there was a great number of others that I might have indicated.

M. Glasson who teaches Civil Procedure at the Faculté de Paris considers that this decision of 1869 is absolutely decisive ; it is he who gave me a note affirming that, in the presence of this decision, there could not be a shadow of doubt about the question, and besides this decision is confirmed by a fairly complete jurisprudence, which you will find indicated in the " Revue des Pandectes Françaises."

x-Q. 85. Precisely I find this decision of Cassation

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of June 28, 1869, quoted in Volume 17 of the "Pandectes Françaises" in support of the opinion that I read to you, that the authority of *res judicata* does not attach to the motifs but to the dispositif, and I find it again, this same decision, in support of the opinion which you give when you say that the authority is attached to the objective motifs. I put the question to you so that you may tell me if the decision decides it in an absolute manner?

A. It seems to me, indeed, to make a distinction 2202
between two sorts of motifs: the motifs which refer directly to the dispositif, which command this dispositif, which benefit by *res judicata*, which is attached to the dispositif—and on the other hand the motifs which are simply the expression of the judge's thoughts, which are a matter of discussion and argument and which do not enjoy the authority of *res judicata*. This is the distinction which seems to appear from the decision of 1869 so that the répertoire of the Pandectes Françaises was able to indicate it 2203
either in support of the authority of *res judicata* which it claims for the motifs, or in support of the thesis which refuses it to them, because it makes the distinction of the objective motifs and the subjective motifs.

There are two sorts of motifs: the first have the authority of *res judicata*, the second have not got it, so that this decision can be quoted in order to refuse this authority to certain motifs and to accord it to others, there is no incompatibility between these 2204
authors, both correspond to the truth.

x-Q. 86. Is the question controverted in theory?

A. I do not think it seriously controverted.

x-Q. 87. Is jurisprudence unanimous on this point?

A. I think that the jurisprudence of the Court of Cassation is absolutely formal. It is a very ancient distinction, it has already been taught by German authors and, I think, by most French authors—I dare not say by all of them, not wishing to go so far, but I think that most French authors are in favour of it.

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x-Q. 88. Nevertheless I see quoted in support of this number 320, a series of judgments, of decisions of the Court of Cassation, of which I have underlined the principal ones : a decision of the Court of Cassation of March 3, 1863,—Cassation July 7, 1874,—decision Cassation, March 17, 1880,—Cassation January 11, 1881—October 18, 1887,—all in support of this thesis I suppose since they follow article 320, that the authority of *res judicata* does not attach to the motifs
2206 of the judgment, but to the dispositif alone. Besides I am going to take some of these decrees.

M. Barbancey : Objection, I ask if you are producing these decisions. If you are not producing them I refuse their being taken into account.

M. Pellerin : I am going to read them.

M. Barbancey : We shall only retain those that you read.

2207 M. Weiss : Allow me to call your attention to the fact that the indications of this number are not contrary to my thesis. I have always thought and said that there were two sorts of motifs, that some enjoy the authority of *res judicata*, and others do not. The decisions of the Court of Cassation that you quote evidently pass upon cases where the motifs have not an objective character.

2208 x-Q. 89. I read article 320 to you (see x-Q. 80). Do you think that it makes a distinction between the objective motifs and the subjective motifs and says that—

I read it over again :

A. It is not sufficient for the judges to have examined a point, for them to have given their opinion on it. These words give precisely the idea of the author of the passage. When the motifs are the reflection of the judge's opinion, the motifs have not in themselves the authority of *res judicata*, but when they prepare the dispositif, when they incorporate,

when they blend with the dispositif, it cannot be contested that they partake of the authority of *res judicata*. 2209

M. PELLERIN: At the request of my adversary I am going to read you one of these decisions of Cassation, so as to gain time.

M. BARBANCEY: It is the only one that we shall retain and I object to the others.

M. PELLERIN: (Reading) Decision of the Court of Cassation, October 18, 1887, Lagrange versus Reverdy,—Sirey, 1889, 1 151. 2210

" The Court

" Whereas by the terms of this article 'all attorneys " shall be obliged to have a register on which they shall " themselves inscribe, in order of date and without any " blanks, all the sums that they receive from their " clients,—whereas they shall present this register " every time that it is required of them and that 2211 " they formulate a judicial demand for payment of costs, " and in default of presentation or regularity in keeping " such register they shall be declared non-receivable in " their demands.'

" Whereas in the present case neither the clauses of " the decision on appeal nor those of the judgment " affirmed state that the eventual defendant, who was " claiming the payment of expenses due to his father as " attorney, was required either by the opposite side or " by the Court to present the register which should have 2212 " been kept by his father, (whereas) the exception is " thus a new one and if it is of public order it is in fact " mixed and cannot consequently be brought for the " first time before the Court of Cassation.

" On the second exception taken of the violation of " articles 1350, 1351, and 1291 of the Civil Code for " false application of article 1290 of the same Code.

" Whereas a judgment of the Tribunal of Commerce " of Narbonne of December 30, 1880, had condemned the " eventual defendant Reverdy son, to the payment of a

2213 " letter of exchange of 1000 francs, signed by his father
" in favour of Lagrange, father, July 15, 1859, with the
" interest from that date;

" Whereas if this judgment seems to have been set
" aside in a motif of the judgment of March 27, 1884,
" affirmed by the decision on appeal attacked, it was
" nevertheless exactly applied by this decision on appeal
" in the settlement of the accounts which it made
" between the parties, since its dispositif formerly
2214 " declares 'Lagrange creditor of Reverdy for the sum of
" 1000 francs, amount of a bill of exchange signed July
" 15, 1859, with interest from that date,' and that it
" makes the settlement of accounts on that basis;

" Whereas, besides, the decision attacked has not, as
" might be supposed from certain motifs of the judgment
" adopted by it, established a compensation at a date
" anterior to the judgment of March 27, 1884, between
" the amount of the aforesaid bill of exchange owing by
" Reverdy, father, and the claim for costs owing to him
2215 " by Lagrange, father, and which were not yet settled;
" (whereas) on the contrary the Court of appeal on the
" one hand determined the amount of the sums due
" for expenses and fees by Lagrange to Reverdy and
" allowed interest thereon up to the day of the affirmed
" judgment; (whereas) on the other hand it took into
" account the integral amount of the bill of exchange
" and all interest thereon since the signing of it and
" (whereas) it is only at the date of the affirmed judg-
" ment of March 27, 1884, that it effected a compensa-
2216 " tion between the claims of Reverdy settled by the
" said judgment and the claim of Lagrange resulting
" from the bill of exchange and settled by the judg-
" ment of the Tribunal of Commerce of December 3,
" 1880, (whereas) the decision on appeal attacked did
" not therefore violate either articles 1290 and 1291, or
" articles 1350 and 1351 of the Civil Code, Dismisses,"
etc.—

And I read in the notes which precede this decision:
" The decision of which one of the motifs does not
" conform absolutely to a former decision, does not vio-

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"late the principle of *res judicata*, particularly if the "second decision properly applies in its dispostif the "law of the former decision."

M. WEISS (the witness): This decision appears to me to be absolutely conformable to the distinction that I indicated a moment ago. In this particular case the question was not of objective motifs but of subjective ones, the dispositif suffices of itself, it contains a decision which explains itself and needs no motifs to explain it. I understand the Court having refused the 2218 authority of *res judicata* to the motifs, there is only an application which I find perfectly rational and legitimate of the difference which I make between objective and subjective motifs.

x-Q. 90. In the case that we are dealing with, the question of the trade-mark of the Grande Chartreuse, which words constitute the trade-mark of the Grande Chartreuse ?

M. BARBANCEY: I object. 2219

M. PELLERIN: I maintain my question.

M. BARBANCEY: I object, I ask that the mark itself be produced. If Mr. Consul will kindly produce one of the bottles, the witness himself will see, the question not being complete and the mark not being constituted simply by words.

(The witness examines the bottle which is is given to him by the Consul.)

x-Q. 91. On the trade-mark itself—I repeat the ques- 2220 tion which I just put—what are the words that are on this trade-mark ?

A. I read on the label: "Liqueur made at the Grande Chartreuse," and the double signature of L. Garnier.

x-Q. 92. Do not the words "Liqueur made at the Grande Chartreuse" indicate the place of origin ?

A. It seems that the words "made at the Grande Chartreuse" have a double signification, they not only indicate the place of manufacture, but also those who

2221

up to today occupied themselves with this manufacture.

x-Q. 93. In your opinion the words "made at the Grande Chartreuse" would not indicate exclusively the place of origin?

A. I do not think that these words have this signification.

x-Q. 94. Supposing that the words "made at the Grande Chartreuse" indicate that the thing made
2222 comes from the Grande Chartreuse, is it not the manufacturer alone who manufactures at the Grande Chartreuse who would have the right to use them?

A. I think it might be feared that a confusion might arise in the minds of the buyers. Up to now one has been accustomed to drink the liqueur made at the Grande Chartreuse by the Carthusians, and those that buy these liqueurs might be deceived by these words being retained.

x-Q. 95. Is it not absolutely that person alone who
2223 manufactures at the Grande Chartreuse who would have the right to use them even in a foreign country?

A. I do not think so.

x-Q. 96. Is it a simple opinion on your part, or can you point out the reasons to me?

A. It is a simple opinion, I consider that the mark might have a deceptive character if it were used such as it is by those who at the present moment make the liqueur at the Grande Chartreuse without having the processes of manufacture which were formerly
2224 used.

Re-direct Examination of M. André Weiss by M. Barbancey:

Re-d. Q. 1. Do you not know certain decisions rendered in France—judgments or decisions,—rendered in France precisely as to the signification of the trademark commonly known under the name of Chartreuse?

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A. I know indeed that there are decisions on this point.

Re-d. Q. 2. I am going to read certain passages to you. I take the decision of the Court of Appeal of Grenoble of May 25, 1853, P. Garnier versus Rivoire Fréres and others, and I read there :

" Whereas this name of ' Chartreuse ' which is only " an abbreviation of the label of the liqueur of the Car- " thusians is not a generic name, as a name derived " from the nature of the liqueur or from the substances 2226 " of which it is composed, would be ; (whereas) this " liqueur has only been named thus because it was in- " vented at the Monastery of the Grande Chartreuse, " and because it is made there by Carthusians, so that " this name designates at the same time the inventors, " the manufacturers and the place of manufacture, and " it constitutes with regard to each of these a dis- " tinctive mark, a specification, which could not truth- " fully be applied to a similar or analogous product " made at Grenoble by Rivoire Brothers ;" 2227

A. This decision is absolutely conformable to the opinion which I stated a moment ago.

Re-d. Q. 3. I shall continue to read certain passages of the decisions to you :

" Whereas the Carthusians have not got the mo- " nopoly of the composition of their liqueur, but " (whereas) they have not communicated their process " of manufacture * * *

M. Pellerin : Still in the same decision. 2228

M. Barbancey : Still in the same decision.

" * * * (whereas) it follows from that that the " Rivoire Establishment has the right to compose a " similar liqueur, if it can, and, in default of another " name, to give to it one taken from this very simi- " larity, which the public will appreciate ; but the " name of ' Chartreuse ' could not be employed, in its " labels and advertisements, unless accompanied by " some expression which reduces it to a simple term

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" of comparison, as, for instance, ' Imitation of Char-
" treuse ' the whole in identical letters, or other desig-
" nations, the non-equivocal sense of which will have
" the effect of obtaining for the Rivoire Establishment
" customers due to its own merits without turning
" away those of the Carthusians ; "

I am going to read to you other passages of other decisions. I cannot pass them all in review, I did not know that your cross-examination would be on these
2230 questions.

M. PELLERIN : Are those decisions quoted in the " Recueil de la Jurisprudence " of the Grande Chartreuse ?

M. BARBANCEY : You already have this collection (recueil) since you used it. I do not suppose that you are doubting the authenticity of the decisions.

M. PELLERIN : I ask you if they are in the
2231 " Recueil de Jurisprudence " of the Chartreuse ?

M. BARBANCEY : It is in the Recueil of the Jurisprudence relating to the mark of the liqueur made at the Grande Chartreuse.

With regard to one of the elements of the mark, that is to say to the signature, here is what I read in a decree of May 19, 1870, of the Court of Appeal of Paris :

" On the main issue :—Whereas the industrial de-
" nomination taken from fancy, from the patronymical
2232 " name of the producer, from its quality or from the
" place of manufacture, is, in any case, the exclusive
" property of the said producer ; (whereas) for a num-
" ber of years, the liqueurs or elixirs made at the Con-
" vent of the Grande Chartreuse have been known to
" the public under the designation found on the bills
" and labels of P. Louis Garnier."

I read again in a judgment of May 31, 1870, of the Civil Tribunal of Seine :

" Whereas the Grande Chartreuse designates a com-
" munity whose name constitutes, to the advantage of

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"the monks who compose it, a collective property "which has a right to the common protection of the law,

"Whereas the denomination of "Liqueur of the "Grande Chartreuse" is regarded in business as be- "ing made by the monks of this community, and at the "seat itself of their establishment;

"Whereas the word "Chartreuse" is only an abbre- "viation which, for the public has the same signifi- "cation and designates the same liqueur;"

With regards to the ownership of the mark and the 2234
characteristic elements of the mark, I read, in the decision of the Court of Appeal of February 5, 1870, what follows:

"Whereas the law had for object to guarantee to "the inventors of a product the advantages of the "fame acquired by their invention, and (whereas) it "had therefore to consider as an injury to their rights "the usurpation of a denomination accredited in busi- "ness;

"Whereas the name "Chartreuse" which is only an 2235
"abbreviation of the label of the liqueur of the Car- "thusians, cannot be considered as a generic name, as "a name derived from the nature of the liqueur or the "aromatic plants of which it is composed, would be; "(whereas) this liqueur was only named thus because "it was invented at the Monastery of the Grande "Chartreuse, and because it is made by the Car- "thusians; (whereas) this name which designates at "the same time the inventors, the manufacturers, and "the place of manufacture constitutes in a triple 2236
"manner a distinctive mark and a specification which "cannot be applied without usurpation to any other "similar or analogous product;"

I read again in a decision of the Court of Cassation of April 26, 1872:

"Whereas the decision attacked declares in fact: "that the word "Chartreuse" applied as a name to the "liqueur made by the monks of whom Father Garnier "is the representative, is only the abbreviation and "the equivalent of a more complete designation; that

2237 " it indicates at the same time the name of the manu-
" facturers (the Carthusians), the name or the com-
" mercial name of the factory, which is no other than
" the community of these same Carthusians, and lastly
" the place of manufacture, that is to say the Mon-
" astery of the Grande Chartreuse ;"

The same " Whereas " that I have just read is reproduced in a judgment of the Correctional Tribunal of the Seine of May 29, 1878, which commences thus :

2238 " Whereas they constitute besides, that of usurpa-
" tion of name provided against by the law of July 28,
" 1824 ; (whereas) indeed it results from the examina-
" tion and from the arguments that the name of " Char-
" treuse " without any other addition, under which
" have been known for a long time in daily use the
" liqueurs made at the Convent of the Grande Char-
" treuse, and which is only a usual abbreviation of the
" labels affixed to these products, cannot be consid-
" ered as a generic name as a name derived from the
2239 " nature of the liqueur or from the name of the plants
" which compose it would be ; (whereas) this liqueur
" was only thus named because it was invented at the
" Monastery of the Grande Chartreuse, and because it
" is made there by the Carthusians ; (whereas) this
" name is only the abbreviation and the equivalent
" of a more complete designation ; (whereas) it in-
" dicates at the same time the name of the manu-
" facturers, the Carthusians, the name or the
" commercial name of the factory, which is
2240 " no other than the community of these same Car-
" thusians, and lastly the place of manufacture, that
" is to say the Monastery of the Grande Chartreuse ;"

I read in a decision of the Court of Cassation of August 10, 1880—Father Grézier versus Gallifet :

" Whereas it is of more than European notoriety
" that the Carthusian Fathers possess a process of
" composition and of distillation of a liqueur designated
" under the following denomination, of which they are
" the proprietors : ' Liqueur made at the Grande
" ' Chartreuse ' or by abbreviation ' Chartreuse ' ;"

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I read a little further on in the same decision :

" Whereas in the second place Gallifet pretends " that the denomination of 'Chartreuse' whatever its " signification may originally have been, has been, has " become public property together with the product " which it designated ; but whereas it is completely " inexact, in fact, that the liqueur made by the Car- " thusians has become public property ; whereas on " the contrary the formula and the process of their " manufacture have remained their secret, and they 2242 " have not ceased defending by every means in their " power their privative property, which has been " effectually recognized by frequent decisions of juris- " prudence ; "

M. PELLERIN : I make the same objection as that that was made to me a moment ago by my learned adversary, that he quotes certain passages of the decision but not the whole of what the decision contains. 2243

M. BARBANCEY : I quote the passages. A little further on, in the same decision, under the number 6 :

" Whereas Gallifet also maintains that in designating " his products under the name of " Chartreuse " he " has in reality usurped neither the name of the " Carthusian Fathers nor the place of their manu- " facture, which is, he says, at Fourvoirie and not at " the Grande Chartreuse."

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Which is exact, the factory being situated at Fourvoirie.

M. PELLERIN : I object to the manner in which the reading of the decision was done, for the witness could not know if the last phrase was contained in the decision.

M. BARBANCEY : I begin again whilst calling attention to the fact that the witness could not make a mistake about the way in which I read it.

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M. Weiss: No, I was not mistaken.

M. Barbancey: And I begin again the reading of the passage:

" Whereas Gallifet also maintains that in designating " his products under the name of Chartreuse he has in " reality usurped neither the name of the Carthusian " Fathers, nor the place of their manufacture, which is, " he says, at Fourvoirie and not at the Grande
2246 " Chartreuse."

And here, personally, I open a parenthesis and I call attention to the fact that the Grande Chartreuse—that the manufacture of Chartreuse was at Fourvoirie.

M. Pellerin: I maintain the objection; the questioner does not have to make known his personal opinion.

M. Barbancey (reading):

2247 " * * * nor their business name which, according " to him, exists solely in the signature Garnier; but " whereas it results, on the contrary, from the documents " produced in the case and already passed upon by " the court (Case, April 26, 1872) that the word ' Char- " treuse ' applied as a denomination of the liqueur made " by the monks of whom Father Grézier, after Father " Garnier, is the representative indicates at the same " time the name of the manufacturer (the Carthusians), " the name or the business name of the factory,
2248 " which is no other than the community of these " same Carthusians and lastly the place of their fabri- " cation that is to say the Monastery of the Grande " Chartreuse where the liqueurs receive if not all their " manipulations at least the special preparation which " constitutes the secret so much sought after by com- " merce ".

I read still in the same decision under § 7:

" With regard to the application of the law of June " 23 1857:

" Whereas the denomination given by a manufact-

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"urer to a product of his industry is assimilated by "article 1 of the afore-cited law, to a trade-mark "which, when this manufacturer has filed as prescribed "belongs to him exclusively; (whereas) thus the name "of "Chartreuse" is, for the Carthusian monks, a "veritable sign the use of which they have legally "reserved for themselves; (whereas) consequently the "usurpation of this name for a similar product consti- "tutes in itself an infringement, which, in the present "case is rendered more marked and more injurious by 2250 "the care which the imitator has taken to give to his "labels a shape and an arrangement which remind one "of those of the Carthusians, and to affix them on "bottles of a similar shape";

I read in a decision of the Court of Cassation (Decree of rejection) of August 10, 1880:

"Whereas the decision attacked holds in fact:

"1° That the Carthusian Fathers have the secret of "the composition and of the making of a liqueur which "they have invented;—2° that Father Garnier first 2251 "and then Father Grézier have successively effected "the regular filing of the marks and labels destined to "designate this liqueur, and that these marks and "labels mention that it is made at the Grande Char- "treuse; 3° that the denomination of "Chartreuse", "instead of being, as the plaintiffs maintain a generic "denomination belonging to the public and serving to "indicate the nature of the fabrication of a kind of "product, is a particular, abbreviated denomination of "a more complete designation, that trade and the 2252 "public apply to a determined product, and which "recalls the name of those who make it, the Carthu- "sians, and above all the name of the place where it is "made, the Grande Chartreuse" (*i. e.* the monastery).

A little further on, under paragraph 17:

"On the second exception taken of the violation of "article 7 of the law of April 20, 1810:

"Whereas admitting that Gallifet & Co. claimed on "Appeal that before the filing of the marks and labels "made by Fathers Garnier and Grézier, they made

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" and put into circulation under the name of " Char-
" treuse " a liqueur like the one which is made by
" Father Grézier, the Court of Appeal of Lyons sets
" aside this pretended precedence by motifs from
" which it results that the denomination of " Char-
" treuse " is a particular denomination which takes its
" origin as much from the name of those who invented
" and make the product which it designates, as from
" that of the place where this product is made " ;

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M. PELLERIN : I formulate the same objection as before namely that you read certain passages of the decision and not all that they contain.

M. BARBANCEY : Neither had I under my eyes the volumes and the decrees that you read, and you already have this Recueil of decisions.

M. PELLERIN : I make this objection because I am of the opinion that the witness cannot form an idea of the decisions when only a pass-
2255 age of the decisions is quoted.

Re-d. Q. 3*a*. I have just read certain decisions, does it, or does it not result from them that according to French decisions of nearly forty years, the mark " Chartreuse " designates at the same time a liqueur made by the Carthusian Fathers, by a secret process and at a certain place, the seat of their establishment, the Grande Chartreuse ?

2256 M. PELLERIN : Objection, as being a leading question.

Re-d. Q. 3*b*. Does that or does that not result from the decisions which I have just read, or from the part of the decisions that I have just read ?

A. That seems to me to result from the whole series of judicial documents that you have just read.

Re-d. Q. 4. Have you personally had the opportunity of consulting these decisions before coming to testify ?

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A. I have had the opportunity of studying the question of industrial property and some of these decisions have been seen by me.

Re-d. Q. 5. Seeing that, according to this whole series of decisions, the mark " Chartreuse " indicates at the same time a product made by the Carthusian Fathers by a secret process and so much sought after by trade, as the decision states,—and a determined place of manufacture which was the establishment of the Carthusian Fathers at the Grande Chartreuse ; this 2258
mark in the hands of someone not possessing the secret of manufacture and having his liqueur made by manufacturers other than the Carthusian Fathers, whilst nevertheless having the liqueur made at a geographical place called the Grande Chartreuse,—in the hands of such a dealer would this mark be or not be deceptive ?

M. Pellerin : Objection, nothing of what the questioner said having been proved, particu- 2259
larly with regard to the secret of manufacture.

M. Barbancey : I maintain my question.

A. I reply to the question as it was put to me : under these conditions it seems to me that a mark would be absolutely deceptive.

Re-d. Q. 6. If this mark continued to be worked by the old manufacturers, that is to say the Carthusian Fathers, with the same process which they always employed, even if it bears on the label,—and it is not that 2260
alone which constitutes the mark—the indication " Liqueur made at the Grande Chartreuse ", provided that there be another label, or some wording clearly indicating that this liqueur formerly made at the Grande Chartreuse is made at another place,—worked under these conditions in the hands of the Carthusian Fathers would this mark be or not be deceptive ?

M. Pellerin : I object to the question put, the questioner continuing to make known his personal opinion.

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Re-d. Q. 6*a*. I ask if the mark, under the conditions that I have just indicated, in the hands of the Carthusian Fathers would be or would not be deceptive ?

A. As long as no confusion is possible, as long as the customer is warned by the addition of a complementary label, the mark could not have a deceptive character.

Re-d. Q. 7. Have you had the opportunity of examining or studying the judgment pronounced between
2262 the " Union Agricola " and Mr. Lecouturier, the liquidator of the Carthusian Fathers ?

A. I remember having read this judgment formerly.

Re-d. Q. 8. Were you not thinking of it in your first opinion ?

A. I referred to it there.

Re-d. Q. 9. Do you remember if this judgment held or did not hold that the Carthusian Fathers had taken away with them the secret of manufacture of their liqueur ?

2263 A. If my recollection is correct it was written down in the judgment, it was declared that the Carthusians remained in possession of their secret.

M. Pellerin : I object, and I ask that the judgment be produced.

M. Barbancey : Will you kindly give it to us, Mr. Consul, it has already been filed : it is the judgment of May 18, 1905.

2264 Re-d. Q. 10. Is, or is not the judgment rendered under these conditions, that is to say between Mr. Lecouturier, the liquidator of the Carthusian Fathers, and the Union Agricola, a judgment which can be invoked against the liquidator who claims the trade-marks and against the person acquiring from the liquidator the said trade-marks ?

A. The liquidator having figured in this judgment, it is certain that with regard to him and with regard to his " ayant-cause " it has the authority of *res judicata* and consequently can be opposed to him.

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Re-d. Q. 11. Here is what I read in this judgment of May 18, 1905, rendered between Mr. Lecouturier, liquidator of the Congregation of the Carthusian Fathers, and the Union Agricola.—I do not read it all, I only read the point that interests me—

> M. Pellerin : That is a document produced—
> M. Barbancey : The others are printed documents which can be procured everywhere, and the authenticity of which no one has ever 2266
> doubted.

" Whereas the present law-suit presents quite a
" special physiognomy, whereas it is useful to point
" out that in ordinary law-suits of counterfeit one always
" finds a manufacturer whose products have acquired
" the confidence of the public, struggling against
" counterfeiters who by means of an imitation more or
" less ingenious, of his mark, seek to make their prod-
" ucts benefit by the favour obtained by the products 2267
" of their rival ; whereas in the present case Lecou-
" turier, liquidator of the property of the Congregation
" of the Carthusians, is really in possession of the trade-
" mark of the Grande Chartreuse, but the products
" which he has made at Fourvoirie and which he de-
" livers to the public under this mark, are not those
" that the Carthusian Fathers made according to their
" process of manufacture and sold up to the time of
" their expulsion from the Grande Chartreuse ; whereas
" by the application of the law of July 1 the mark of 2268
" the Grande Chartreuse has indeed been able to re-
" main in the hands of the liquidator of the Congre-
" gation which was expelled and dissolved, but the
" secrets or processes of manufacture were carried
" away by the Carthusians, as being an unseizable
" property, as long as the non-patented processes re-
" main unknown, and the mark was thus separated from
" the product the origin of which it had up to that
" time guaranteed "

I ask, under these conditions, if a mark which is

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applied to a product other than the one that the judgment states, to a product other than the product which up to that day had been guaranteed by this mark, the use of this mark by a manufacturer who would thus give under a universally known mark a product other than that which the mark designated,—if the mark is not deceptive in the hands of this manufacturer?

A. It appears to me deceptive.

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M. PELLERIN: I let my adversary put all these questions, but I object as not referring to points raised in my examination.

M. BARBANCEY: I object to objections made afterwards, and I ask my adversary to formulate his objections when I formulate my questions.

M. PELLERIN: I could have formulated them at each question.

M. BARBANCEY: I protest against objections
2271 made afterwards, and I do not admit them.

M. PELLERIN: The Tribunal of New York will judge this.

Re-d. Q. 12. If I remember rightly, my honourable contradictor, in the very commencement of this cross-examination, put different questions to you about the fraud which could be committed in different countries, either in France or in foreign countries, with trade-marks. I wish to give greater precision to this part of
2272 the cross-examination.

I suppose a French manufaccurer proprietor of a mark, and who exploits his mark in France only, solely in France, can he or can he not complain if a foreign rival uses this mark in a foreign country seeing that the French manufacturer, as I told you a moment ago, never used his mark in this foreign country? Is there or is there not fraud?

A. As long as the exploiter of the mark limits himself to a given territory, as long as the French manufacturer never worked his mark outside of France, it

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really seems that there is no fraud on the part of a foreigner to work a similar product outside of France.

Re-d. Q. 13. In any case could this French manufacturer who never used his mark in a foreign country complain of his mark being thus employed in a foreign country by another person?. Has an injury been caused, has he suffered an injury?

A. The injury does not appear as long as this French manufacturer did not usually work his mark in a foreign country, he cannot complain of a third person 2274
working a similar product on this ground which he did not reserve for himself. I do not see any injury, therefore I do not see the possibility of an action for damages.

Re-d. Q. 14. Let us go further. In your opinion could this French manufacturer invoke foreign laws to have a stop put to the use that a competitor was making—

I put my question differently: Can a French manufacturer claim his mark in a foreign country before 2275
having it registered there or before having at least used it there?

A. No, no, there must have been either use or registering according to the legislations. Certain legislations content themselves with the use and attribute a purely declarative character to the filing, others give an attributive character to the filing: it is a question of local legislation.

Re-d. Q. 15. In any case, for a mark to be protected in a foreign country, is it or is it not necessary for it 2276
to be either registered or employed there?

A. Without any doubt.

Re-d. Q. 16. And as long as it has not been either employed or registered there, can any one say that one has a right to the mark in a foreign country?

A. No, it cannot be said.

Re-d. Q. 17. Does the fact of having had one's mark registered in the country of origin—if besides one is not within the delay of four months provided by the Convention of 1883—does this fact prevent a third

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person from having this mark or a similar one registered in a foreign country ?

A. I did not very well understand the scope of your question.

Re-d. Q. 18. Does the fact of having a mark registered in its country of origin and in this country of origin only, without on the other hand having it registered in a foreign country, or using it in a foreign country, does the simple fact of the filing of the regis-
2278 tration in the country of origin prevent a third person, —if besides the one who first filed in the country of origin cannot invoke the delay of the Convention of 1883—does it prevent a third person from having a similar mark registered in a foreign country ?

A. Evidently not, the liberty of the third person remains entire.

Re-d. Q. 19. Under these conditions, is it exact to maintain, as did Mr. Lyon-Caen in his opinion—these are in or about the terms, I have not got it here, I shall
2279 get it if you like—is it exact to maintain as did Mr. Lyon-Caen, that the mark filed in the country of origin is, by this fact alone, protected in other countries ?

A. I have already protested against this interpretation of my learned colleague.

Re-d. Q. 20. In matters of jurisprudence, are not decisions often rendered according to cases ?

A. That very often happens.

Re-d. Q. 21. Is it rational, when the manufacture of liqueurs is in question, and to prove that certain de-
2280 cisions can be applied to trade-marks, to invoke only decisions rendered about wines ?

A. It is not rational, those are two absolutely different matters.

Re-d. Q. 22. Is there an analogy between wine and liqueurs ?

A. No, the analogy does not exist.

Re-d. Q. 23. Is wine a natural product ?

A. Wine is a natural product, whilst liqueur is manufactured.

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Re-d. Q. 24. Is the case the same or is it not the same ?

A. The case is different and the solution may be different.

Re-d. Q. 25. Therefore can the decisions that have been quoted to you about wines be applied in the case of liqueurs ?

A. They lose all their authority when a liqueur is in question.

Re-d. Q. 26. If I am not mistaken, my honourable contradictor put various questions to you tending to demonstrate that the Carthusian Fathers, who were not an authorized Congregation in France, could not possess in France, and, if I am not mistaken, you replied that the Carthusian Fathers, whilst not being a recognized Congregation, had nevertheless been considered as a society *de facto*, able to possess through its members — 2282

M. Pellerin : Objection— 2283

I should be very glad if you would tell me if I have reproduced your opinion about this question ?

A. You have reproduced it very faithfully.

M. Pellerin : I call the attention of my honourable contradictor to the fact that I did not tend to demonstrate anything, I put questions.

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Re-d. Q. 27. I should simply like to read to you certain passages of decisions, which treat of this special question :

Judgment of the Correctional Tribunal of Seine, of January 29, 1879, Father Grézier versus 1° Détang, 2° Caillo—under paragraph 3 :

" The plea of inadmissibility taken from the fact " that Grézier was not acting in his own name ; that " he was acting in the name of and as Procurator of " the Convent of the Grande Chartreuse, which, being

2285 " a religious community non-authorized cannot plead
" in its own name before the Court.

" Whereas if non-authorized religious communities
" do not constitute civil persons, they form neverthe-
" less among the members who compose them, so-
" cieties *de facto*, responsible before a third person
" for the engagements which they enter upon, whether
" these engagements arise from contracts or quasi-
" contracts, or whether they are caused by offences or
2286 " quasi-offences; whereas this responsibility in these
" various cases, results less from the principles of the
" contract of this society than from the principles of
" natural law inscribed in articles 1382 and the follow-
" ing ones of the Civil Code; whereas the members of
" the said association who are not personally under
" legal incapacity, can acquire rights and personally
" contract obligations, by reason of which the mem-
" bers of these associations are under the jurisdiction
" of the tribunals; whereas conformably to these prin-
2287 " ciples, it has been constantly decided that his re-
" sponsibility applies, in the measure of their partici-
" pation in the common business, to all those who
" form a part of the irregularly established congrega-
" tion; whereas it is incurred above all by whomso-
" ever under the name of Superior or other, has the
" direction of said congregation, or holds its property;
" whereas otherwise the non-authorized community,
" on account of its defective constitution and because
" it would have evaded, contrary to the wish of the
2288 " law, the supervision of the government, would
" escape, in its collective personality and in the in-
" dividuals who compose it, all action on the part of a
" third person having engagements with it, or injured
" by its fault, thus finding by its infringement of the
" laws the principle of immunity with good cause re-
" fused to the congregations who submitted to the
" rule; whereas morality, law, public order would be
" injured by such a result; whereas such was in the
" main the decision of Roman law in this matter;
" whereas it results indeed from laws: 1, *Quoad*

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" *cujuscumque universitatis; 1, 2, 3, De Collegiis et* " *Corporibus, au Digeste,* that every society or cor- " poration could only constitute itself in cases spe- " cially provided by law, by the *senatus-consultes* or " the edicts of the emperors ; that every association " formed contrary to these provisions was punished " with the same penalties as those who, at the head of " armed troops invaded the temples and public places ; " that every illicit association so formed should be " dissolved by the care of the magistrates, but those 2290
" who had formed a part of it were allowed to share " the common funds of the association, if any existed : " *sed permittitur eis, cum dissolvuntur, pecunias com-* " *munes, si quas habent, dividere, pecuniasque inter* " *se partiri ;* whereas such a decision is evidently only " the application of a principle of equity by which " one must take into account the state of affairs " created by a community of interests which has lasted " for a certain time " ;

I read in a judgment of the Civil Tribunal of Seine 2291
of June 30, 1880, Father Grézier versus 1° Widow Pertus, 2° Guichard, 3° Arnaud & Co.,—No. 5 :

" Whereas these principles are the same, whether " the question is of a recognized or a non-recognized " religious congregation ;

" Whereas the only difference existing between the " recognized communities and those that are not " recognized is that the former constitute a moral " person who can acquire and possess, whilst the latter " only form an association *de facto* without a civil ex- 2292
" istence and whose members are not able to possess ;

" Whereas it is only necessary to state that in law a " non-recognized community has an existence *de facto* " not contrary to the law ; "

These few judgments—I could quote others, but that would perhaps lead us too far. In any case do these two passages establish that according to French jurisprudence it was acknowledged that members of religious congregations could possess of themselves

2293 and that the congregation could possess through its members?

A. That appears to me certain. The decisions that you have just quoted absolutely support the thesis which I expressed that these non-authorized congregations were deprived of all personalty, but constituted a society *de facto* whose various members had conserved the integral enjoyment of their civil rights, and notably the aptitude of possessing.

2294 Re-d. Q. 28. In this order of ideas since French jurisprudence accords to monks personally the right of possession "*ut singuli*" of property which appears to belong to the congregation, the fact, by the law of July 1, 1901, of declaring that these monks could not possess and that none of the property of the congregation could return to them,—from this point of view cannot the law of July 1, 1901, be considered as a law of confiscation, no matter whether it had or had not a cause for provoking such a confiscation?

2295

M. Pellerin: I object, the first part of the question not being proved.

(At the request of Mr. Barbancey, the stenographer re-reads the question.)

"In this order of ideas, since French juris-
"prudence accords to monks personally the
"right of possession "*ut singuli*" of property
"which appears to belong to the congrega-
"tion—"

2296 M. Pellerin: It is to that I object, it is not proved that French jurisprudence accords this right to monks.

M. Barbancey: I have just read judgments and decisions. What do you understand by jurisprudence?

I have explained for the American judges that when it is not proved, when jurisprudence has not admitted—

I must ask what you understand by jurisprudence: you know that there is a jurisprudence

2297

for and against ; I have just quoted judgments which establish that monks could possess, it is for you to quote for me the contrary decisions.

M. PELLERIN : I have not got to reply to your questions, if you have questions to put, you must put them to Mr. Weiss.

M. BARBANCEY : I reply to your objections ; it is for you to quote judgments anterior to the law of 1901 which contradict the judgments which I read. 2298

A. In the presence of the jurisprudence as it appears in the judgments you have just read, it appears certain that the law of 1901 contains measures of depossession and I should even say of confiscation against the members of the congregations. Members of congregations are dispossessed of, expropriated from a right which jurisprudence accords them *de facto* before the law of July 1, 1901 : there is dispossession, there is confiscation. 2299

M. WEISS : Mr. Consul, I annexed to the case during my examination the text of a decree of the Swiss Federal Tribunal of Lausanne, judging as a Penal Court of Cassation.

An error got into this text, a purely material error, an error of the pen. The " Chancellerie " of the Federal Tribunal corrects by the declaration which I have the honour to put into your hands, this slight error. I beg that you will 2300 kindly add this document to the text of the decision.

(The additional document filed by the witness is marked [Weiss] Exhibit No. 29).

RE-CROSS-EXAMINATION OF M. WEISS BY M. PELLERIN :

Re-x-Q. 1. Have you had the opportunity of going over the Recueil Jurisprudence which my adversary referred to, and from the texts of which he read some passages ?

2301

A. I have not had it in my hands but I know of its existence.

Re-x-Q. 2. Then you do not know if there are decisions against the points about which he quoted some decisions?

A. My impression as it arises from my recollections, is that the jurisprudence as it was given by Mr. Barbancey is constant, I do not think that there are any dissidences.

2302 Re-x-Q. 3. You have not gone over the whole of the collection?

A. No.

Re-x-Q. 4. Do you know by whom the collection was made?

A. No.

Re-x-Q. 5. You do not know if it was by the Carthusian Fathers?

A. No.

Re-x-Q. 6. Do you know for whom this collection
2303 was made?

A. I do not know that either.

Re-x-Q. 7. To go back to an example which was given to you a moment ago by my honourable contradictor, I place myself in the same hypothesis. I suppose a Frenchman having a trade-mark filed in France, and using his mark in a foreign country.

M. Barbancey: Objection, I did not place myself in that hypothesis.

2304

M. Pellerin: I go back to the ideas that you expressed, and I suppose a Frenchman having a trade-mark filed in France, using his trade-mark in a foreign country, although it is not filed there. I ask you, supposing a foreigner makes use of this trade-mark, whether the Frenchman would not have the right, in virtue of the principles of article 1382 of the Civil Code, to damages against the person who makes use of it?

A. That would depend upon the local legislation.

2305

You take the hypothesis of a Frenchman, of a Frenchman who has filed his mark in France and uses it in a foreign country. A foreign counterfeiter takes possession of this mark, could the Frenchman prosecute him ?—Is that the hypothesis ?

Re-x-Q. 8. Yes, supposing the Frenchman uses it without filing it.

A. That would depend upon the local legislation.

Re-x-Q. 9. Do you not know that the principle of article 1382 is applied in all countries ? 2306

A. If the foreign country has adopted the principle as is probable, there will be no objection to the Frenchman invoking this provision or an analogous provision to ask for reparation, but—I take the hypothesis where the foreign or local legislation has adopted principles analogous to our legislation—it is not in virtue of French laws, but of local laws in which are probably inscribed the same principle, that the prosecution for counterfeiting will be pursued.

Re-x-Q. 10. You told me, did you not, that to your 2307 knowledge there was no civilized country where the principle of article 1382 was not recognized ?

A. I do not think there is, it is a rule of natural law.

RE-RE-DIRECT EXAMINATION OF M. WEISS BY M. BARBANCEY :

Re-re-d. Q. 1. Can it be said that this article 1382 of the Civil Code is applied in all civilized countries ? Is it universal ? Should it not be said that there 2308 are as many articles 1382 as there are different laws ?

A. Doubtless, the numbering of this article is French. The principle of article 1382 is of universal application, it is a principle of common law which is at the basis of all civilized legislation, but it can have different forms and different numbers.

Re-re-d. Q. 2. In any case which is the law that the manufacturer who thinks himself injured will invoke ? Is it article 1382 of the Civil Code or say article X of the local law ?

2309

A. It is the local law, there is no doubt about that. Besides there is for this a reason of international law, it is that all that concerns the repression of offences and quasi-offences is always reserved to the territorial legislation.

Re-re-d. Q. 3. Consequently, can it be said that the protection is local ?

A. It is certainly local.

Re-re-d. Q. 4. And that it is only derived from the
2310 national law of each country ?

A. It is derived from the national law only of each country.

RE-RE-CROSS-EXAMINATION OF M. WEISS BY M. PELLERIN :

Re-re-x-Q. 1. I did not put you the question whether article 1382 was applied in all countries, but whether the principles which arise from it are applied in all
2311 countries,—and I put this question to you again ?

A. I replied to you that to my knowledge there was no legislation which did not sanction directly or indirectly, explicitly or implicitly, the principles contained in article 1382 of the French Civil Code.

Signed by the witness

ANDRÉ WEISS.

M. PELLERIN : Mr. Consul, I should be obliged to you if you would kindly record that the
2312 Commission is finished with regard to Mr. Bonnet and with regard to me, and under these conditions I should be much obliged to you if would kindly send all documents, depositions and necessary exhibits to the Tribunal of New York, with the smallest possible delay.

THE VICE-CONSUL : Agreed.

2313

Consulate General of the United States of America,
London, England.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

2314

PERE ALFREDO LUIS BAGLIN, PROCUREUR of the Order of CARTHUSIAN MONKS, Convent La Grande Chartreuse, for himself and all of the other Members of the said Order.

vs.

THE CUSENIER COMPANY.

In Equity
"Chartreuse."

2315

Stipulation Re Commission.

It is hereby stipulated and agreed by and between John Cameron Graham, Esq., Counsel for the Plaintiff, and C. H. Carden Noad, Esq., & L. B. Sebastian, Esq., Counsel for the Defendants, that the Stipulation heretofore entered into by the Attorneys of record, be modified by providing that the Complainant herein take his rebuttal proofs between April 15th., 1906, and the end of the present month of June, 1906, instead of between April 15th., 1906, and May 15th., 1906, as in the said Stipulation set forth. And that the Defendant accordingly shall not be required to commence taking such rebuttal proofs until the 22nd. day of June, 1906.

2316

2317

Consulate General of the United States of America, London, England.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

2318

BAGLIN

v.

THE CUSENIER COMPANY.

In Equity "Chartreuse."

St. Helen's Place, In the City of London, England, at 12 o'clock noon.

2319 Depositions of witnesses, produced, sworn and examined the twenty-second day of June, in the year One thousand nine hundred and six, at the Office of the Consulate General of the United States of America, at London, England, situate at St. Helen's Place, Bishopsgate Street, in the City of London, England, aforesaid, under and by virtue of a Stipulation issued out of the Circuit Court of the United States, for the Southern District of New York, in a certain cause therein depending and at issue between Baglin,
2320 Complainant, and Cusenier Company, Defendant, as follows:

William Cocks, a stenographer and disinterested person, (a member of the Institute of Shorthand Writers practising in the Supreme Court of Judicature in England) is appointed by the Commissioner to take down the deposition in shorthand, he being first duly sworn to take correct notes of the deposition thereof into typewriting.

IT IS HEREBY STIPULATED between Counsel for Plaintiff and Counsel for Defendant that the Depositions

2321

should be taken by Francis W. Frigout, Esq., Deputy Consul General of the United States of America, at London, England, notwithstanding that the Stipulation does not specifically name "Deputy Consul" or "Deputy Consul General".

JOHN CAMERON GRAHAM, ESQ., Barrister-at-Law, of No. 2 Garden Court, Temple, London, England, instructed by Messrs. Hollams, Sons, Coward & Hawksley, of 30 Mincing Lane, London, Solicitors of the Supreme Court of Judicature in England, appeared as 2322
Counsel on behalf of the Plaintiff.

C. H. CARDEN NOAD, ESQ., Barrister-at-Law, of No. 3 New Square, Lincoln's Inn, London, England, and L. B. Sebastian, Esq., Barrister-at-Law, of No. 13 New Square, Lincoln's Inn, London, England, instructed by Messrs. Steavenson & Couldwell, of 5 Fenchurch Street, in the City of London, England, Solicitors of the Supreme Court of Judicature in England, appeared as Counsel for the Defendant.

2323

MR. JAMES TURNER, being duly and publicly sworn, is examined by Mr. J. C. Graham on the part of the Plaintiff, and doth depose and say as follows:

Q. 1. (By the Commissioner). What is your full name?

A. James Turner.

Q. 2. What is your age about?

A. 65 years and upward.

Q. 3. And your occupation or profession?

A. A Wine, Spirit and Liqueur Merchant. 2324

Q. 4. And your business address?

A. 2 Walbrook, in the City of London, England.

Q. 5. (By Mr. J. C. Graham). You are a partner in the firm of Eddison & Company?

A. Yes.

Q. 6. I think that is a firm which carries on a very large business in liqueurs, and things of that sort?

A. Yes.

Q. 7. You would not venture to say it was the largest wholesale business in this country?

2325

A. No.

Q. 8. But it is getting near it?

A. Yes.

Q. 9. It will be shortly?

A. Yes.

Q. 10. How long have you been personally in this business?

A. 50 years.

Q. 11. And during that time you have had a very
2326 large business in the liqueurs made at La Grande Chartreuse?

A. Yes.

Q. 12. And I suppose you recognize the taste of it and the bottles it is sold in perfectly well?

A. Yes.

Q. 13. Have you tasted the liqueur which is now being made by the Monks at Tarragona?

A. I have.

Q. 14. What do you say as to the resemblance of
2327 flavour or taste to the liqueur made at Chartreuse?

A. There is a resemblance—there is no doubt about it.

Q. 15. Tarragona is the place where the Monks are now making it?

A. Yes.

Q. 16. They have only begun there recently, I believe?

A. That is all.

Q. 17. Apart from the fact that the Tarragona
2328 liqueur is younger than the liqueur that was made at Chartreuse, do you notice any material difference in the flavour?

A. I do not quite understand your question, because I presume that the Chartreuse that is being made now at the Monastery is no older than that made in Spain, as I understand.

Q. 18. I am not talking now about the liquidator's liqueur.

A. I beg your pardon, I thought you were talking about the liquidator's liqueur.

2329

Q. 19. No, I am talking about the liqueur made by the Monks before the liquidator's liqueur came on the scene. How does that resemble the liqueur being made at Tarragona by the Monks?

A. It is the same thing except in respect of the difference of age.

Q. 20. It tastes the same, but it is obviously younger; is that what you say?

A. It wants age to amalgamate the different ingredients. 2330

Q. 21. As far as you can judge from the flavour, would you say that they were made of the same materials?

A. Yes.

Q. 22. Since the liquidator came on the scene you have tasted the liqueurs made by him at the Monastery?

A. I have.

Q. 23. What do you say about the liquidator's liqueurs as compared with the original Chartreuse as 2331 regards flavour?

A. There is something in the old Chartreuse which the liquidator has not got, and it shows itself by adding water to the different liqueurs.

Q. 24. That is a well recognized test, is it?

A. I do not know.

Q. 25. Well, it is a test you have employed yourself?

A. Yes.

Q. 26. And you have placed reliance upon it? 2332

A. I have and I do.

Q. 27. And that has enabled you to detect the difference between the two liqueurs?

A. Yes.

Q. 28. Is it a marked difference?

A. It is a difference.

Q. 29. Which do you think is the better of the two?

A. Which two are you talking of?

2333

Q. 30. I am talking about the liquidator's and the old stuff made at Chartreuse?

THE WITNESS: I thought you were talking about the liquidator's and the Monks'.

MR. GRAHAM: I am.

Q. 31. My question is which do you say is the better, the liquidator's or the original genuine stuff made by the Monks at Chartreuse?

2334

A. The original.

Q. 32. Much better than the liquidator's?

A. Yes.

Q. 33. Now going to the liqueurs now made by the Monks at Tarragona, is there a demand for that in this country?

A. Yes, certainly.

Q. 34. So far as your experience has gone is there any great demand for the liquidator's liqueurs?

2335

A. There is a demand, so far as my experience goes there is a demand.

Q. 35. Have you ever been asked for the liquidator's liqueurs?

A. I have.

Q. 36. Any considerable quantity of it?

A. No, very small.

Q. 37. You have perhaps sold a large quantity of the Tarragona liqueurs?

A. Yes, a large quantity.

2336

Q. 38. As "large" and "small" are comparative phrases how much do you mean?

A. 90% of the Tarragona and 10% of the liquidator's.

MR. GRAHAM: That is all I ask you.

CROSS-EXAMINATION BY MR. C. H. C. NOAD ON BEHALF OF THE DEFENDANT:

x-Q. 39. You say you sold 90% of the Tarragona liqueur as compared with 10% of the liquidator's liqueur?

2337

A. Yes.

x-Q. 40. Is that because people have asked for the Monks' liqueur?

A. No.

x-Q. 41. What have they asked for?

A. For the original.

x-Q. 42. And in answer to their request for the orginal what have you supplied them with?

A. With the Tarragona.

x-Q. 43. They never come to you and ask for the 2338
Monks' liqueur?

A. No.

x-Q. 44. For what reason have you supplied them with the Monks' liqueur when they have asked you for the original?

A. Because they, the Monks, have the original recipe.

x-Q. 45. As to the original recipe in the first place are you an expert in the testing of liqueurs?

A. Well, I have had experience for a good many 2339
years in doing so.

x-Q. 46. But you would not call yourself an expert?

A. No I would not put myself down as an expert in anything.

x-Q. 47. Do you do your own testing?

A. Yes.

x-Q. 48. But you do not put yourself down as an expert?

A. No.

x-Q. 49. On what do you base your own opinion as 2340
to these two liqueurs?

A. On my own taste.

x-Q. 50. How do you conduct your experiments?

A. I merely drink them or taste them.

x-Q. 51. Drink them or taste them?

A. Drink them and taste them both.

x-Q. 52. Did you at any particular time have a formal tasting of the three liqueurs?

A. Of the three liqueurs?

x-Q. 53. The yellow and the green?

2341

A. The two liqueurs, the yellow and the green.

x-Q. 54. When I say three liqueurs I mean the old as made by the Monks at the Monastery at Chartreuse, the new liqueur made by the liquidator, and the liqueur made at Tarragona?

A. Yes.

x-Q. 55. How do you conduct your experiments? Do you merely take three glasses and taste the three of them in the open?

2342 A. Yes.

x-Q. 56. You do not in any way conceal the glasses and taste them blindfolded?

A. No I do not.

x-Q. 57. As to the two liqueurs, what difference did you find between them?

A. I cannot tell you what the difference is but there is a difference.

x-Q. 58. Do you ascribe that to the materials of which they are made up. Do you ascribe the differ-

2343 ence to the herbs of which they are made up?

A. To the making up and to the blending of the different ingredients.

x-Q. 59. Did you notice any difference between the Monks' new liqueur which was attributable to the spirits in the old liqueur?

A. No I should say the spirit would not make any difference.

x-Q. 60. Do you say there would be a difference in the spirit?

2344 A. No.

x-Q. 61. You did not notice the difference of Spanish spirit in the new liqueur?

A. No.

x-Q. 62. Not a heavier taste?

A. Certainly not.

x-Q. 63. Then what was the object of adding water?

A. Because it is a good test adding water; in liqueurs which are not what I consider first class the water will alter the colour and make them dull, not immediately but the next day.

2345

x-Q. 64. That is a matter of colour not of flavour?

A. It would alter the flavour a great deal when it is discoloured.

x-Q. 65. Would you undertake to tell the difference between two glasses, one containing liqueur made by the liquidator, and one containing liqueur made at Tarragona?

A. No I would not.

x-Q. 66. If two glasses were put before you you could not tell which was which?

2346

A. No I could not.

x-Q. 67. Then they must be very much alike?

A. Yes, very much alike—very similar. There is a difference in the flavour which I might be able to detect once and it might be not again—no doubt they are similar but there is a difference.

x-Q. 68. Supposing the Spanish liqueur was not now on the market would you have any hesitation in saying that the liquidator's liqueur was a very good successor to the old?

2347

A. I might say that if there was not the other on the market, I should sell the liquidator's.

x-Q. 69. You would sell the liquidator's if the other was not on the market?

A. Yes, it is part and parcel of our business to sell what the public requires.

x-Q. 70. The liquidators call theirs "Chartreuse"?

A. They label it.

x-Q. 71. Apart from what they label it, if you tasted it you would call it "Chartreuse"?

2348

A. Precisely, I should.

x-Q. 72. Do you know anything about the materials from which Chartreuse is made?

A. No.

x-Q. 73. You have no personal knowledge on the subject?

A. No.

x-Q. 74. You know it is made partly of herbs?

A. Yes.

2349

x-Q. 75. They have to be gathered in a special place?

A. Yes.

x-Q. 76. They have to be gathered in the neighborhood of the old Monastery, is that so?

A. Yes.

x-Q. 77. You have been engaged in the making of liqueurs yourself?

A. No.

2350 x-Q. 78. Not in England?

A. No.

x-Q. 79. Do you know the conditions under which the herbs are used in the making of liqueurs?

A. No, neither does the liquidator.

x-Q. 80. You say the two liqueurs, the liqueur of the liquidator and the liqueur of the Spanish Monks, have a very great similarity?

A. They have a similarity.

x-Q. 81. And either of them has a similarity to the

2351 old?

A. Has a similarity to the old.

x-Q. 82. Then if there is a secret in the process of manufacture do you not think the secret must be possessed by both the Monasteries at the present time?

A. No I do not.

x-Q. 83. Then how do you account for the liqueurs of the liquidator being so nearly alike both to the old and to that of the Spanish Monks?

A. Because they knew of certain ingredients to put

2352 in but they do not know the whole secret.

x-Q. 84. Then the whole secret is a very small thing?

A. No it is not a very small thing.

x-Q. 85. It must be so if you a professional wine merchant undertakes to tell the difference?

A. It is a very difficult matter.

x-Q. 86. It must be a very small secret?

A. No not necessarily.

x-Q. 87. To go back to the first point, you said there

2353

was a very small demand for the liquidator's liqueurs as compared with the Tarragona liqueurs?

A. Yes.

x-Q. 88. When people come to you they do not ask either for the Tarragona liqueurs or the liquidator's liqueurs?

A. Yes sometimes, if they asked for the liquidator's liqueurs we should send them the liquidator's liqueurs.

x-Q. 89. Do people ask for a special kind of liqueur?

A. Yes, they do, some ask for the liqueur made by 2354 the Monks.

x-Q. 90. Some ask for it?

A. Some ask for it, yes.

x-Q. 91. And some ask for the liquidator's?

A. Yes some do.

x-Q. 92. And the majority do not ask for either?

A. Yes.

x-Q. 93. Some ask for the Monks'?

A. Yes.

x-Q. 94. Why is that? 2355

A. Because we keep both.

x-Q. 95. In any large quantity?

A. The Monks' we only keep a smaller quantity of than of the other kind because we are so seldom asked for it.

x-Q. 96. But if no special liqueur is asked for you supply the Monks'?

A. Yes.

x-Q. 97. As a business man do you think it is likely that a manufacturer at Tarragona would take the 2356 trouble to import the whole of his raw material from France?

A. I do.

x-Q. 98. Would not they have to pay heavy duties?

A. Yes.

x-Q. 99. Not if imported from Spain?

A. No, the French spirit is much better than the Spanish spirit.

x-Q. 100. The French spirit is much better than the Spanish spirit?

2357

A. Yes.

x-Q. 101. Would not that increase the expense of manufacturing in Spain where there are duties on spirit?

A. I suppose it would.

x-Q. 102. You are assuming there are duties on spirit imported from Spain?

A. That I do not know.

x-Q. 103. The natural thing would be to make
2358 liqueurs from the materials found on the spot where it is manufactured?

A. No if the Monks have a recipe they make it from the materials they used to make it at the Monastery.

x-Q. 104. You think they would naturally do so?

A. Naturally.

x-Q. 105. Both these two liqueurs are considerably newer at present than the old which was put on the market?

A. Yes certainly.

2359 x-Q. 106. When they become older what do you think will be the effect, will they become more or less like the old?

A. Less like the old I should think the liquidator's would be less like the old.

x-Q. 107. And the Monks' liqueurs would be more like the old?

A. Yes.

x-Q. 108. You think so?

A. I do think so.

2360 x-Q. 109. Why?

A. Because they have the special secret which the liquidator's have not, and there is something in the amalgamation.

x-Q. 110. You said you thought there was a secret because there is a difference between the two?

A. I do not say I think there is a secret, but there is a secret.

x-Q. 111. How do you know?

A. Because it has always been acknowledged that

2361

the Monks have a secret in connection with the manufacture of their liqueurs.

x-Q. 112. But two persons may have a secret?

A. I do not think the Monks would give their secret to anybody else.

x-Q. 113. You say there was a secret it is because it was admitted that there was a secret?

A. Yes.

x-Q. 114. But you do not know that from your own knowledge personally? 2362

A. I do not know personally anything about the secret of the Monks.

x-Q. 115. If there was a secret they would get more like the old with age?

A. What are you driving at?

x-Q. 116. Of liqueurs improved by age?

A. They all improve by age certainly.

x-Q. 117. In a case like the present where the secret is one of process, do not you think that the employees engaged in the manufacture would be likely to know 2363 at any rate a considerable amount about the secret?

A. No, not about the secret.

x-Q. 118. Not the employees?

A. I should say not—none but the Monks.

x-Q. 119. But you cannot use a secret process without there is somebody who understands it and can make it up?

A. Oh yes, that is so.

x-Q. 120. You must have somebody who understands the secret in order to be able to manufacture it, he 2364 could not do it without?

A. Not without knowing the secret.

x-Q. 121. The Monks did not manufacture the liqueurs themselves, they had to employ men to do so?

A. Certainly.

x-Q. 122. There are certain ingredients made up by the Monks?

A. Yes.

x-Q. 123. They would have to employ some one to manufacture the liqueurs?

2365

A. The Monks manufacture the secret portion of it, I think.

x-Q. 124. That is your opinion?

A. Yes.

RE-EXAMINATION BY MR. J. C. GRAHAM ON BEHALF OF THE PLAINTIFF:

Re-d. Q. 125. It was suggested to you that if there
2366 was an isolated instance of two glasses being put before you that you could not tell one from the other?

A. Yes.

Re-d. Q. 126. But from a sufficient number of tests to enable you to form a sort of average, would you have difficulty in distinguishing one from the other?

A. I do not suppose I should.

Re-d. Q. 127. Of course anybody may be taken in on an isolated instance?

A. Certainly.

2367

WILLIAM THOMAS PHEYSEY, being duly and publicly sworn, is examined on the part of the plaintiff by Mr. J. C. Graham and doth depose and say as follows:

Q. 1. (By the Commissioner) What is your full name?

A. William Thomas Pheysey.

Q. 2. What is your age?

A. 40 years and upwards.

2368 Q. 3. Your occupation?

A. Manager of the Wine Department of the Army and Navy Co-operative Society.

Q. 4. Your business address?

A. 105 Victoria Street, London, more commonly known as the Army and Navy Stores.

Q. 5. (By Mr. Graham) They do an immense business in liqueurs?

A. Yes.

Q. 6. Tell us what your exact duties are there?

A. I have to taste all the wines, spirits and liqueurs

2369

Q. 7. How long have you been doing that?

A. I have been 22 years at that duty.

Q. 8. And the wine is bought on your judgment?

A. Yes.

Q. 9. And the liqueurs?

A. Entirely.

Q. 10. Then of course it is unnecessary to say that you were very familiar with the original liqueur made by the Monks at Chartreuse?

2370

A. Yes.

Q. 11. Have you seen anything of the liquidator's liqueurs since he came on the scene?

A. I have seen samples.

Q. 12. I suppose you have seen samples also now made by the Monks at Tarragona?

A. Yes.

Q. 13. Taking first of all the original liqueur made by the Monks at Chartreuse, and that which they now make at Tarragona, what do you say as to resemblance in flavour?

2371

A. There is a resemblance in the flavour but there is a difference caused by the newness of the spirit not being so refined as the old spirit was that was formerly employed. I have seen recent samples of the Tarragona liqueur and that newness is decidedly disappearing, it has improved very much.

Q. 14. Do you attribute that to their using a better brandy?

A. Yes, it is cleaner and there is not so much Terrir due to the first essays they made.

2372

Q. 15. Now as regards the liqueurs they are now making, how do you contrast them with the original stuff made by them at the Monastery?

A. The advantages are certainly on the side of the older liqueur but that is on account of the age and of course to the circumstances under which the liqueur was made, the spirit and so forth.

Q. 16. Do you know of your own knowledge whether the Monks when they were carrying on this business at the Monastery got any of their spirit from Spain?

2373

A. I have heard many years ago that they used to buy a fair amount of spirit from the South.

Q. 17. By the "South" I suppose you mean the same place where they are now getting it from?

A. No, I should think they are getting it from another source now. I think it was Jerez that they originally got it, so I am told.

Q. 18. So far as the liquidator's liqueur is concerned, have you contrasted that side by side; first of all we
2374 will take it with the Tarragona liqueur that is now being made?

A. Yes.

Q. 19. What do you say about that as regards taste?

A. There is a distinct difference, more especially in the green liqueur.

Q. 20. Does that difference in your mind point to a difference in ingredients?

A. Yes.

Q. 21. And that is a marked difference?

2375 A. Yes.

Q. 22. Is it in favour of the liquidator's liqueur or the Tarragona liqueur?

A. I think it is in favor of the Tarragona.

Q. 23. What you have said with respect to Tarragona I suppose you would say with much greater force as respects the old liqueur made at Chartreuse?

A. Yes.

Q. 24. So we need not go over that again. Do you you know what labels the liquidator employs on his
2376 bottles and the way in which he sells his liqueurs?

A. I do.

Q. 25. What do you say as to the resemblance of the liqueur made by him and the liqueur made by the Monks at Chartreuse?

A. They resemble each other entirely and would mislead anybody if they were told that they were the original Chartreuse.

Q. 26. There is no particular reason why they should not put these labels on these particular bottles, I suppose?

2377

A. No, except that the whole of the property together with the labels have been appropriated and they can do what they like with them.

Q. 27. That is what the liquidator thinks, there was a great demand for the liqueur made at the Monastery?

A. Yes.

Q. 28. What about the liqueur which is now made at Tarragona?

A. It is about the same.

Q. 29. The same large demand? 2378

A. Yes.

Q. 30. What do people ask for when they ask for liqueurs—the bulk of the people?

A. They ask in a general way for Chartreuse, green or yellow.

Q. 31. Have you had many specific enquiries for the liquidator's liqueur?

A. I do not think I have had one, I do not think so.

Q. 32. I suppose if you were personally asked to supply liqueurs without it being specified who was the 2379 maker, you would send the Tarragona?

A. Yes, certainly.

Q. 33. You would never think of sending the liquidator's?

A. No.

Q. 34. I am told that you are a very large distributor of liqueurs?

A. Yes, I sell a very large quantity.

Q. 35. That I suppose means that you have a very large sale? 2380

A. Yes.

Q. 36. Amounting to many thousands a year?

A. Yes, a very large amount.

Q. 37. My question is addressed particularly as to the number of consumers, there is a large number?

A. Yes.

2381

CROSS-EXAMINATION BY MR. C. H. C. NOAD on the part of the defendant:

x-Q. 38. Is the reason why you would sell Tarragona Chartreuse rather than the original Chartreuse, because you keep more of that than the other?

A. Yes.

x-Q. 39. So you naturally sell those which you keep?

A. Yes.

2382 x-Q. 40. As to the matter of label, when a business is sold in England the labels or trade marks go with it?

Q. Yes.

x-Q. 41. Therefore where a business is transferred in France there is nothing to show that they do not belong to the new proprietors?

A. Certainly.

x-Q. 42. Have you ever noticed the labels on the old Chartreuse and the liquidator's liqueurs?

2383 A. Yes.

x-Q. 43. Do you remember what was on the labels on the bottles of the old Chartreuse?

A. No I do not at the moment.

x-Q. 44. Do you remember if these words were upon them: "Fabriquee a la Grande Chartreuse"?

A. I do not remember.

x-Q. 45. What do you say that means?

A. Made at the Grande Chartreuse.

x-Q. 46. That means that the liqueur is made at a

2384 certain place?

A. Yes.

x-Q. 47. Do you know where the liquidator's liqueur is made?

A. Made at the Grande Chartreuse.

x-Q. 48. Therefore they are entitled to put it on the bottles?

A. Yes, whether you transfer it for a consideration to yourself or whether you buy it I suppose it is very much the same.

x-Q. 49. Leaving apart the question whether the

2385

transfer was by a sale or by a forced eviction you think that the liquidator carrying on business at the Monastery has the right to use the old label as used before by the Monks?

A. Oh I cannot say that I can recognise, I do not say that I can recognise that.

x-Q. 50. You said that you tasted the Tarragona liqueur recently?

A. Yes.

x-Q. 51. Have you recently tasted the liquidator's 2386
liqueur?

A. Yes.

x-Q. 52. Of about the same age as the Tarragona?

A. I should think they would be.

x-Q. 53. Do you say there was a difference between them?

A. Oh yes.

x-Q. 54. What was the difference between them?

A. There is some ingredient different to what there is in the Tarragona. 2387

x-Q. 55. But you said that you thought the difference in the Terragona was due to the spirit?

A. Partly, the difference in the Tarragona Chartreuse from the old Chartreuse is in the spirit entirely.

x-Q. 56. Do you know anything about the use of herbs in liqueur?

A. Yes, I have had a good knowledge of it.

x-Q. 57. Do you know under what condition they are used, whether they are used dry or fresh?

A. Well, a fresh herb is always better than a dry 2388
one.

x-Q. 58. Then a liqueur made with fresh herbs would be apt to better than one made with dry ones?

A. Certainly

x-Q. 59. If you wanted herbs to be packed to travel any distance you would have to dry them very considerably, would you not?

A. Certainly.

x-Q. 60. Which would impair their freshness?

2389

A. They would have to be specially treated if they had to be carried any distance.

x-Q. 61. The last witness said he thought French spirit was a better spirit than Spanish spirit; do you agree with that?

A. There are parts of Spain where you can get a very good spirit indeed—a very clean spirit, and it would be after proper treatment quite equal to the French.

2390 x-Q. 62. There would be no difference from the French?

A. Very little, it would depend upon the extent to which they were rectified, of course.

x-Q. 63. You are speaking of spirit used in this manufacture, of course?

A. Yes, and I think the liquidator's liqueur also shows the difference in the spirit as well, markedly.

x-Q. 64. What difference do you find in the liquidator's?

2391 A. It is too clean.

x-Q. 65. The spirit is too clean?

A. Yes.

x-Q. 66. What do you mean by that?

A. Well, it it is highly rectified spirit, much more so than that used by the Monks at Tarragona, judging by the flavour.

x-Q. 67. Then you think that the heavy flavour of of the Monks' liqueur at Tarragona is the correct flavour?

2392 A. Yes.

x-Q. 68. Do you get that clean heavy flavour in the old Chartreuse?

A. To a great extent age modifies that very markedly; that flavour goes off in the case of French spirit with age. That is one reason why the new liqueur of the Tarragonia Monks is better than the first sample of of the Tarragona liqueur that was sent to commence with.

x-Q. 69. From what you have been saying about spirit improving with age, the spirit used in the manu-

2393

facture by the liquidator would be better than the spirit used in the Tarragona manufacture ?

A. I should say yes, it is not better but it is cleaner.

x-Q. 70. More drinkable while new ?

A. Yes, more palatable perhaps would be the better word.

x-Q. 71. Then you do not think that the Monks at Tarragona import their spirit from France ?

A. I do not think so.

x-Q. 72. In fact, if there was a duty to pay, it would 2394
be a very expensive thing ?

A. Oh, there is a very heavy duty to pay.

x-Q. 73. There is a very heavy duty to pay ?

A. Yes, alcohol manufacturing is a highly protected industry in Spain.

x-Q. 74. You are familiar with the bottles in which the Monks put up their liqueur now ?

A. Yes.

x-Q. 75. Have you ever noticed on the bottle the words " Union Agricola " ? 2395

A. Yes.

x-Q. 76. Are you aware what the meaning of " Union Agricola " is ?

A. No. It may be some term which they are compelled to use, as some companies are, for instance, take the title " Credit Lyonnais ", they cannot use their title " Credit Lyonnais " either in Spain or Portugal.

Re-examination by Mr. J. C. Graham on the part of 2396
the Plaintiff :

Re-d. Q. 77. You have no doubt they can get a considerable quantity of spirit in Spain for the manufacture of these liqueurs ?

A. Yes.

Re-d. Q. 78. You have no doubt that they can ?

A. Yes.

Re-d. Q. 79. There is no necessity for them to send to France for spirit ?

2397

A. No.

Re-d. Q. 80. I do not know whether you have been to Tarragona, and seen how the Monks set to work to make these things?

A. No, I have never been there.

Re-d. Q. 81. And you do not know in what condition the herbs are used there, whether dried or not: I suppose you do not know anything about that?

A. I have to look after a very large Perfumery De-
2398 partment, as well as wines, and so I have a large knowledge of herbs, both fresh and dry.

Mr. Joseph Humphreys, being duly and publicly sworn is examined on the part of the Plaintiff by Mr. J. C. Graham, and doth depose and say as follows:—

Q. 1. (By the Commissioner) What is your full
2399 name?

A. Joseph Humphreys.

Q. 2. Your age?

A. 37 years and upward.

Q. 3. Your occupation or business?

A. I am chief Superintendent and Buyer for J. Lyons, Limited, Wine and Spirit Department.

Q. 4. And your business address is what?

A. Cadoy Hall, Kensington, London.

Q. 5. (By Mr. J. C. Graham) J. Lyons & Co. are
2400 the very well-known Caterers in London?

A. Yes, I believe so.

Q. 6. Having shops all over London?

A. Yes.

Q. 7. And do they sell liqueurs?

A. Yes, they do a fairly extensive business in liqueurs.

Q. 8. You were here when Mr. Pheysey was here, and you have heard all that he said?

A. Yes.

Q. 9. Do you disagree with anything that he said?

2401

A. No.

Q. 10. You entirely corroborate all the evidence of Mr. Pheysey?

A. Yes, I do.

Q. 11. I am told you never have dealt in the liquidator's liqueur?

A. No, we have not handled a bottle of it.

Q. 12. Have you any particular reason for not doing so?

2402 A. Well, the reason we do not do so is that we do not look upon it as the genuine stuff. We only look upon the stuff made by the Monks as the genuine article.

Q. 13. What do you call now the "genuine article"?

A. That which is made by the Monks at Tarragona.

Q. 14. You agree with everything that Mr. Pheysey said?

A. Yes.

2403 Q. 15. (By Mr. Noad) You agree with what he said on the matter of herbs?

A. I am not an herbalist so I cannot quite agree with him on the herb question, I am not a maker of liqueurs.

Q. 16. (By Mr. J. C. Graham) Do you agree with what he said about the Spanish Spirit—Spanish Brandy?

A. Yes, certainly you get some very fine brandy from Spain.

2404 Q. 17. But it is not exactly the same as that from France?

A. It practically is the same when rectified.

Q. 18. But an expert could tell the difference?

A. I doubt it.

Q. 19. Have you had any special tasting of these liqueurs as made by the Monks at Tarragona and the original?

A. Yes, I have tasted the old original, and the stuff made by the Monks at Tarragona, and the Liquidator's.

2405

Q. 20. Did you have a blindfold test?

A. Yes.

Q. 21. Both of the yellow and the green?

A. Yes.

Q. 22. What difference did you find between the two liqueurs, the yellow and the green?

A. A very pronounced difference between them. In the Tarragona personally I found a very striking difference; the difference was this, that one you could
2406 only say was too much of an imitation of the other—they put too much honey in and spoiled it.

Q. 23. Have you ever tested the old original Chartreuse?

A. Yes.

Q. 24. Did you notice the honey flavour was very pronounced in that?

A. Yes, in the new.

Q. 25. When the yellow is getting old the pronounced honey flavour will be less, will it not?

2407 A. Yes.

Q. 26. Do you think that the Liquidator's will be the same?

A. You want to watch the development. You cannot say "This will be like this or that." That is a question I would not like to answer definitely.

Q. 27. You would not say it would not have a chance of being like the old honey flavour?

A. No, I should not like to say that it will ever be like the old original. You are asking me a question
2408 which is a leap in the dark. The stuff we know is now only quite young, and what it will be in five or ten years time will have to prove.

Q. 28. Let us have it by degrees. In a new liqueur the flavour is apt to be very pronounced while new—you agree with that?

A. Yes.

Q. 29. And they will tone down with age?

A. Yes, some do, and in some the flavour always predominates.

2409

Q. 30. You cannot tell whether this will happen or not?

A. No.

Q. 31. So if there is a pronounced flavour in the liquidator's now, there is a chance that it will tone down to the old original Monks' Chartreuse after some years?

A. No.

Q. 32. Why not?

A. Because the constituent properties are not the 2410
same, and you cannot expect it to turn out the same.

Q. 33. You have not analysed it?

A. No.

Q. 34. But you have tasted it?

A. Yes.

Q. 35. Will you say what you have done to test it?

A. No.

Q. 36. You will not say what experiment you made?

A. No. 2411

Q. 37. You decline to do so?

A. Yes, I have a process of my own for testing things.

Q. 38. And you will not describe it?

A. No, not for you or any man.

Q. 39. You say you do not look upon the liquidator's liqueur as the genuine stuff?

A. Yes.

Q. 40. Have you ever noticed the labels on the old bottles? 2412

A. Yes.

Q. 41. Have you ever seen a statement on them that they were made by the Monks?

A. No.

Q. 42. Have you ever seen a statement that they were made at the Grande Chartreuse?

A. No, I have never taken particular notice of the label. Of course I know the old label, and of course I know the liquidator's label.

Q. 43. Do you know the Benedictine Liqueur?

2413

A. Yes.

Q. 44. Do you know by whom that is made?

A. That is made by a trading concern who bought the secret from the Monks.

Q. 45. Do you know there never was any secret in the Benedictine?

A. I never heard that there was not, I am rather surprised that you tell me so, but I am not too old to learn.

2414 Q. 46. You do not know anything about the Benedictine?

A. No.

MR. NOAD: I do not ask you anything.

MR. RONALD ELLIOT CUNNINGHAM, being duly and
2415 publicly sworn is examined by Mr. J. C. Graham on the part of the Plaintiff, and doth depose and say as follows:

Q. 1. (By the Commissioner) What is your full name?

A. Ronald Elliot Cunningham.

Q. 2. What is your age?

A. 35 years and upward.

Q. 3. And your business?

A. Wine and Spirit Agent, and Agent for the Liqueur
2416 manufactured by the late Peres Chartreux.

Q. 4. And your London address?

A. 50 Mark Lane in the City of London.

Q. 5. Are you a partner in a firm?

A. I am.

Q. 6. What is the name of your firm?

A. H. Riviere & Co.

Q. 7. (By Mr. J. C. Graham) Your firm are the selling agents in this country for the monks of Tarragona?

A. Yes, in this country, and South Africa.

2417

Q. 8. I believe you have a very large sale of the Monks' liqueurs?

A. Yes, a very large sale.

Q. 9. And you are very familiar with what most of the other big firms are doing in this country and elsewhere, as regards what they are selling?

A. Yes.

Q. 10. Do you know whether the liquidator's liqueurs are very largely advertised in the catalogues of other firms?

2418

A. In the price lists, I suppose you mean?

Q. 11. Yes.

A. In the price lists I should say there are very very few. I have been brought into connection with those of some of the leading firms, and there are very few in which I see the liqueur quoted as Chartreuse manufactured by the Monks previous to their expulsion from France, that is the original liqueur or the "Liqueur des Peres Chartreux", which is what the Monks at Tarragona make now.

2419

Q. 12. What I understand you to say is, that you have got a large number of price lists sent out by large dealers of liqueurs in this country?

A. Yes.

Q. 13. And that you find that the liqueurs which are mentioned in those catalogues, as I understood you to say, are not the original stuff made by the Monks at Chartreuse or the stuff they are now making at Tarragona?

A. That is quite correct, and there is no mention made of the other in the majority of the price lists.

2420

Q. 14. This bundle of price lists which you wish to put in, are they the price lists which have been sent to you in this country?

A. Yes.

Q. 15. Then we had better put that little bundle in.

(The bundle of price lists, consisting of 22 price lists is handed to the Commissioner to be annexed hereto and marked as Exhibits Nos. 1 to 22 inclusive.)

2421

Q. 16. In addition to those 22 price lists which you have put in, you now wish to put in seven more of these price lists, each of which has been signed by some member of the firm who issues the circulars?

A. Yes.

Q. 17. So as to be quite sure that those lists come from these firms?

A. Yes. The object was to have specific proof that these price lists were issued by either the partners or
2422 the directors of the firm.

Q. 18. We may take it then that these last seven price lists which I am putting in, to your certain knowledge emanate from the particular firms.

A. Yes.

(The seven price lists are handed to the Commissioner to be annexed hereto and marked as Exhibits Nos. 23 to 29 inclusive.)

2423 Cross-examination by Mr. C. H. Carden Noad on the part of the Defendants.

x-Q. 19. Can you find in one of these price lists or in the other bundle anything which has reference to the old Chartreuse or to that of the Peres Chartreux?

A. Yes, they are there (pointing to a price list).

x-Q. 20. I can find nothing in this to show that Grande Chartreuse is meant, or whether it means the old or the new?

2424 A. (No answer.)

x-Q. 21. Is there any reason why this first entry of Grande Chartreuse should not refer to the Liqueur of the Tarragona Chartreuse?

A. Because it is precisely stated that it is the original Chartreuse made in France, and everyone knows that word "original" means the "original" Chartreuse made by the Monks in France, previous to their expulsion from France.

x-Q. 22. But does not the Liquidator state that that is the original as shipped from France. Does he not

2425

as a fact represent that is the original as shipped from France ?

A. He may call it the original, but the fact remains that it is not.

x-Q. 23. I ask you does not the Liquidator represent that is the original ?

A. Certainly, he represents that is the original, but it does not follow that it is right.

x-Q. 24. No, but if he so represents, the compiler of this list might compile it from his representation ? 2426

A. I find no words there as a matter of fact saying that the Liqueur quoted there is the liqueur made by the Monks, but 99 out of a hundred people would know that that is what is meant.

x-Q. 25. You are not speaking as an expert in liqueurs ?

A. I am merely speaking about the price lists.

MR. J. C. GRAHAM : I have not called him as an expert only, I have called him as a gentle- 2427
man who quoted these price lists.

x-Q. 26. (By Mr. Noad) As to the price lists, entries in the price lists are usually paid for ?

A. Are they ? I never heard of that before.

x-Q. 27. Is it not the fact that people who put their goods in these price lists have to pay for the entries ?

A. I am not aware of it.

x-Q. 28. Take this list (handing it to the Witness).

A. That is not a wine card if you look at it. Adver- 2428
tisements are paid for, but these are not advertisements of the Chartreuse, and I never heard of these entries being paid for.

x-Q. 29. I think your father is a partner in the firm of Portal, Dingwall & Norris ?

A. That is an irrelevant question ; I do not see where the relevance comes in.

x-Q. 30. I only wish to know whether you have any connection with that firm.

A. No, I have no connection with it whatever.

2429

x-Q. 31. That is enough for me. You have produced 29 price lists ?

A. Yes.

x-Q. 32. How many price lists are there issued in the trade ?

A. About 5,000 in Great Britain and Ireland. Most wine merchants issue a list.

x-Q. 33. As to these lists you have here should you be prepared to say that in every case where the
2430 liqueurs of the Peres Chartreux are quoted, that the liquidator's liqueurs are not in stock ; would you say that ?

A. No, I would not say that. When that list was given to me I know that they did not stock the Liquidator's stuff.

x-Q. 34. Give me that list (Witness handed the list to Counsel).

THE WITNESS : The proof is that the price of
2431 that is the enhanced price which proves that it is the Liqueur made by the Monks previously to their expulsion. I say the price proves that it is.

x-Q. 35. But if Mr. Eddison keeps the liqueur of the liquidator and does not put it in his price list, the same might apply to any other of these lists which you have here. The firm might get the liqueur, and not put it in their list ?

2432 A. That I do not know anything about ; I have been to the people here to get the lists.

x-Q. 36. Do you know of any reason why the people should not put the liquidator in their lists ?

A. I do not know of any. The public know what is the genuine liqueur, and therefore they require to have that which they look upon as the original liqueur made by the Monks, whether it is in Spain or in France.

x-Q. 37. Do you know whether these people leave

2433

the Liquidator's out of their price lists because they have been threatened in the past?

A. What do you mean?

x-Q. 38. By what is known in the trade as stopping the importation in the Customs.

A. The sale of the original liqueur is kept up because the public want it, they know it, and therefore they have always had repeat orders, which is a further proof that the public want it.

x-Q. 39. I am not now on the point that they put 2434
into their price lists the liqueur of the Peres Chartreux, but that they have left out the liqueur of the liquidator. Is it not a fact that they leave out the liqueur of the liquidator because they have been threatened in the past?

A. No, certainly not.

x-Q. 40. Has not your firm taken proceedings at the Custom House to stop the importation of the liquidator's liqueur?

2435

A. We did stop it.

x-Q. 41. During that time yours has only been sold here?

A. Yes. The leading firms in London know what to quote, and they sell what they are asked for. If they are asked for old Chartreuse they sell that made by the Monks.

x-Q. 42. That does not apply to all the leading firms in London?

A. That applies to those we come in contact with.

2436

x-Q. 43. But they do not sell all yours?

A. I should say they are the majority of the leading firms certainly. I would not like to give a percentage, but certainly I think 75 per cent.

x-Q. 44. When in the past any London firms sold any of the liqueurs of the liquidator have you not sent them a notice threatening them for what they were doing?

A. No, not as far as my memory serves me. I do not remember.

2437

x-Q. 45. At the time when you were having it stopped in the Customs?

A. That we sent a threatening letter?

x-Q. 46. Threatening by a circular?

A. I know now what you are referring to. Do you want me to tell you the wording of the circular? I do not think it was a threatening circular. Have you got a copy?

x-Q. 47. Give me your recollection of the circular
2438 that was sent out.

A. We send out so many, we have sent out several circulars. We are sending them out every month.

x-Q. 48. In order to stop the sale of the liquidator's liqueurs?

A. No, that has nothing to do with the liqueurs at all, but we send out all sorts of circulars in our business.

x-Q. 49. I am referring to the circular or circulars you firm sent out with reference to the liquidator's
2439 liqueurs.

A. I think we sent out four circulars. I do not know how many now.

x-Q. 50. Four circulars?

A. I should think so quite.

x-Q. 51. Threatening persons selling it?

A. No, not threatening at all, telling people the truth.

x-Q. 52. Have you any of those circulars which you sent out to the trade here?

2440 A. No.

x-Q. 53. Will you produce them?

A. I have not them here.

x-Q. 54. We are going to adjourn now; will you do so after the adjournment?

A. Yes, I will produce some of them.

(Adjourned to half-past two o'clock in the afternoon for luncheon and to enable the Witness to search for and produce the circulars.)

2441

x-Q. 55. Do you produce the circulars which you sent out to the trade in connection with the liqueur of the Peres Chartreux?

A. Yes.

x-Q. 56. I just want to go through the circumstances which led up to your sending out a circular. In the first place did you not stop the importation of the liquidator's liqueur at the Custom House?

A. We did.

2442

x-Q. 57. And when the Custom House allowed the liquidator's liqueur to be shipped into England, did you not commence an action against the Custom House for an Injunction?

A. Yes.

x-Q. 58. What was the result of that action?

MR. J. C. GRAHAM: The record would show that.

2443

A. Yes, you will see that from the Record.

MR. SEBASTIAN: The action was dismissed with costs.

x-Q. 59 (By Mr. Noad) I am told the action was dismissed with costs?

A. It was dismissed with costs because the time is only 10 days and it had run out and there is another action. Mr. Sebastian knows better than I do, he has an excellent memory and he really remembers more than I do.

2444

MR. SEBASTIAN: As I said the action was dismissed with costs.

x-Q. 60 (By Mr. Noad) When you were no longer able to keep out the liquidator's liqueur at the Custom House, you sent out circulars to the trade?

A. Yes.

x-Q. 61 (By Mr. Sebastian) You do not know the reason why it was dismissed with costs?

2445

A. To be quite candid we are not in the case at all. We have nothing to do with the case.

x-Q. 62 (By Mr. Noad) You commenced an action against the liquidator in this country?

A. We commenced no action at all, we are not in it in any shape or form.

x-Q. 63. The principals for whom you are agents commenced an action?

A. They commenced an action.

2446 x-Q. 64. And you filed an Interlocutory Injunction in that case?

A. We filed nothing. Our principals did. We are not in the proceedings at all. I really do not know anything about them.

x-Q. 65. Subsequently I think you sent out circulars to the trade on the subject of the Liqueur des Peres Chartreux?

A. Yes we sent out several subsequently, three I think—at all events we did.

2447 x-Q. 66. Several circulars?

A. Yes.

x-Q 67. With the object of stopping the sale of the liqueurs?

A. The object of the circulars is stated in the circulars.

x-Q. 68. But roughly you will see the object of them was to push the sale of your own liqeur and to stop the sale of the liquidator's liqueur?

A. To enlighten the trade and the public on the
2448 situation of affairs.

x-Q. 69. From your point of view?

A. It is written down in the circular what the object is.

x-Q. 70. In the circular which you sent out in October, 1904, the following statement is contained, is it not: "We are further requested to draw attention to the fact that the well known label of the Grande Chartreuse has been registered in England as a trade mark as far back as 1876 and is the property of the Abbé Rey, and consequently any one selling under

2449

such labels any mixture or liqueur not manufactured by the Peres Chartreux will render himself liable to proceedings for infringement." That circular contained that sentence?

A. Yes, you can get that from the circular.

x-Q. 71. Do you think that this circular would have any effect in the trade?

A. In what way?

x-Q. 72. In causing the trade to stop selling the liqueur of the liquidator? 2450

A. It is to inform the trade and they are in a position to judge for themselves.

x-Q. 73. And you think they would judge for themselves from what is said in that circular?

A. It was written with that object.

x-Q. 74. With reference to your Exhibit No. 20 of Innis Smith & Co., are you aware whether the liqueur of the Peres Chartreux was put into the list upon payment or not?

2451

A. No.

x-Q. 75. Are aware that Innis Smith & Co., wrote to the Agents in England for the liquidator's liqueur and offered to insert their liqueur upon payment in that list?

A. Wrote to whom?

x-Q. 76. To George Idle & Chapman, Limited, the the English Agents?

A. May I correct a statement I made? Several firms if they have enclosed a pamphlet we pay them for that, and if my memory serves me right we might 2452 have paid them so much for putting in that circular.

x-Q. 77. (By Mr. Graham) As an advertisement?

A. As an advertisement which is a general practice with us.

x-Q. 78 (By Mr. Noad) Do you know whether your firm received a letter to this effect from Innis Smith & Co.: "We are making final arrangements for the advertisements in our wholesale list and we shall be pleased to know if we may include a space therein"?

A. I think it is possible from what I can remem-

2453

ber. We have so much correspondence in the trade that it is difficult to remember any one single letter.

x-Q. 79. That is an ordinary letter?

A. An ordinary letter; we get any number of these letters.

x-Q. 80. And you would probably have paid for advertising the liqueur Chartreuse in that list?

A. Not for advertising it in that list but we pay for the distribution of these pamphlets at so much per
2454 thousand but they would have quoted the liqueur whether we did that or not, so I imagine.

x-Q. 81. You do not know of course?

A. I did not consult with Messrs. Innis Smith & Co., inasmuch as they wrote a letter which, if my memory serves me right, they did, to know whether we would advertise and we said we did not advertise the liqueurs —advertise either in the body of the Wine Lists or in advertisements, but on the other hand we paid so much per thousand for inserting the leaflet they accepted
2455 that and so therefore that accounts for that leaflet.

x-Q. 82. And this is the leaflet you caused to be inserted? (handing it to witness)

A. One like it.

x-Q. 83. This leaflet contains the statement: "This liqueur is the only one identically the same as the one made at the Monastery of the Grande Chartreuse in France". Is it to your knowledge identically the same?

A. Absolutely.

2456 x-Q. 84. Is it made from the same spirit as before?

A. I do not know the ingredients of the spirit but the Monks of the Grande Chartreuse made their liqueurs in the past I happen to know from spirits which they got from Spain and therefore there is every reason to believe that having gone to Spain they make their liqueur with Spanish spirits identically the same as in the past.

x-Q. 85. They made their liqueurs in the past with Spanish spirits?

2457

A. I do not say always, but they have made their liqueurs with Spanish spirits.

x-Q. 86. In spite of the duty?

A. I believe the duty has been altered.

x-Q. 87. But in recent years the Monks at the Grande Chartreuse have used French spirits?

A. I cannot tell you exactly, nobody knows whether it was all made of French spirit or whether they made it of Spanish spirit.

x-Q. 88. Your impression is that at present they 2458
make it with Spanish spirit?

A. As far as I know I am not in a position to answer the question, I think they make it from Spanish spirit.

MR. NOAD: I will just have these Circulars put in and marked. One is dated October, 1904, which is handed to the Commissioner to be annexed hereto and marked as Exhibit No. 30. The other is a pamphlet printed on yellow paper inserted in the Price List of Innis Smith 2459
& Co., which is handed to the Commissioner to be annexed hereto and marked as Exhibit No. 31.

x-Q. 89. I have a list of firms dealing in wines and spirits here and I would ask you to tell me the standing position of those firms. W. A. Stanley?

A. That is a very large firm.

x-Q. 90. Hedges & Butler?

A. A very large firm, they are wine merchants. 2460

x-Q. 91. In a large way of business?

A. Yes, they are very well known.

x-Q. 92. H. Williams & Co., do you know them?

A. I know them.

x-Q. 93. Will you just look at that list, just glance down it. (Handing it to the witness). If all those persons were selling any one article of manufacture, would you not consider that a very good clientèle?

A. They are well known firms.

x-Q. 94. That is all you say?

2461

A. Yes.

x-Q. 95. You consider that a good and representative clientéle?

A. Yes.

x-Q. 96. (By Mr. Graham:) If the liquidator were selling to those firms you agree that they are respectable people?

A. I agree that they are respectable people, some of them are very large people.

2462 x-Q. 97. (By Mr. Noad:) We put in this list to identify it. It is put in as a selection of our customers.

(The list is handed to the Commissioner to be annexed hereto and marked as Exhibit No. 32.)

2463 Mr. James Scutari Taylor Restell, being duly and publicly sworn is examined by Mr. J. C. Graham on behalf of the plaintiff and doth depose and say as follows:—

Q. 1. (By the Commissioner) What is your full name?

A. James Scutari Taylor Restell.

Q. 2. What is your age about?

A. 50 years and upwards.

Q. 3. And your occupation?

2464 A. Wine and spirit broker and expert.

Q. 4. What is your business address?

A. 29 Mark Lane in the City of London.

Q. 5. And your firm's name is what?

A. W. & G. Restell.

Q. 6. (By Mr. Graham) You carry on a very large business as wine and spirit brokers, I think?

A. We do.

Q. 7. And you have been in this trade for over 30 years?

A. Since 1871.

2465

Qs. 8 and 9. For the last 20 years you have had a very large experience in tasting wines and liqueurs ?

A. Yes.

Q. 10. You have frequently tasted these liqueurs coming from Chartreuse ?

A. I have many times.

Q. 11. And you are quite familiar with the flavour of the liqueur which would be made by the Monks at Chartreuse ?

A. Yes. 2466

Q. 12. You have also I suppose quite by chance no doubt come across some liqueurs made by the liquidator in this case ?

A. Yes.

Q. 13. And tasted them ?

A. Yes.

Q. 14. How do the tastes or flavours of those two liqueurs contrast with one another ?

A. They are not identical. There is a similarity about them but they are not the same. 2467

Q. 15. Is there any difficulty for any person who is a fairly good taster to distinguish between the flavours?

A. None whatever.

Q. 16. Have you also tasted the liqueurs which are now being made by the Monks at Tarragona ?

A. Yes.

Q. 17. And what do you say with respect to the flavour of them as compared with the original stuff made by the Monks ?

A. I tasted them particularly this morning and I 2468 make them out as being the same liqueurs as were made by the Monks previous to their expulsion and allowing for the difference of age of course one is very much older than the other, one sample was very much older and it showed the improvement made.

Q. 18. Due to age ?

A. Yes.

Q. 19. So far as you could judge by tasting could you form any idea that there was any difference in the materials that were used in making them ?

2469

A. Practically no difference.

Q. 20. Is there any great demand for the liquidator's liqueurs in this country ?

A. So far as I am concerned not very much.

Q. 21. Do the people when they want these liqueurs write to you for liqueurs or do they specify the name of the maker ?

A. They simply write for the old liqueurs if they can get them.

2470 Q. 22. They simply write for the Chartreuse ?

A. Yes.

Cross-examination by Mr. Sebastian on the part of the defendant.

x-Q. 23. I want you to tell me this, when you tried the liquidator's liqueur, you knew it was the liquidator's you were trying ?

A. Oh yes.

2471 x-Q. 24. I suppose you would have been surprised if the liquidator's liqueur had been equal to the old ?

A. I am an expert taster and know what liquid I am am tasting which is before me and I taste it without any prejudice. It is my business.

x-Q. 25. You started with a strong conviction that you were going to find it very inferior ?

A. Oh no I did not.

x-Q. 26. Where did you get the stuff from that you tasted ?

2472 A. From samples sent to me by Messrs. Riviere & Co.

x-Q. 27. Do you know where they got it from ?

A. No I do not.

x-Q. 28. What you have been talking about was something which was brought to you by Messrs. Riviere and you know nothing more about it ?

A. I finished tasting this morning and these samples were sent to me by Messrs. Riviere & Co., I have tasted liqueurs many times previously.

x-Q. 29. Do not keep putting things on me which I

2473

do not ask you, but answer the question. You say you have tasted frequently ?

A. Yes, I have tasted many times.

x-Q. 30. Under what circumstances ?

A. After dinner and I have tasted professionally when I have been valuing stock.

x-Q. 31. Do you know how long the liquidator has been in possession ?

A. I do not know, I can guess.

x-Q. 32. Roughly speaking something about 3 years ? 2474

A. About 3 years, I do not know exactly, but about 3 years.

x-Q. 33. It is obvious that with a liquidator who has not been in possession for more than three years that his liqueur cannot be compared with the old liqueur of the Chartreux, and if as I understand he has not made any for 18 months it would be still less capable of being compared with the old liqueur ?

A. Quite so.

x-Q. 34. When you tasted the old liqueur, did you 2475 taste it and distinguish it as being a liqueur not more than 18 months old ?

A. Yes.

x-Q. 35. And make allowances accordingly ?

x-Q. 36. You did ?

A. Yes.

x-Q. 37. And the result would naturally be I suppose—I am not an expert and you are—that it would be somewhat stronger, would it not ?

A. It would be stronger being young. 2476

x-Q. 38. Not quite so mellow ?

A. Not quite so mellow.

x-Q. 39. Did you find the taste of the herb in it ?

A. It was rather deficient in what you would call a herby taste.

x-Q. 40. You found it rather deficient ?

A. Yes.

x-Q. 41. What is your view about herbs ? Do you think the herbs improve or not by drying ?

A. I do not know anything about it.

2477

x-Q. 42. Have you tried the experiment of tasting these liqueurs without knowing what they were beforehand?

A. I tasted them 6 or 8 months ago without knowing which was which.

x-Q. 43. Which one was that?

A. I think it was the yellow I tasted, one of them.

x-Q. 44. Was that the liquidator's or whose?

A. I tasted both blindfolded without knowing which
2478 was which.

x-Qs. 45-46. Which did you taste blindfolded, for I do not follow you?

A. I tasted the liquidator's and the original liqueur made before the expulsion.

x-Q. 47. And you had no difficulty in telling that the one was not the other?

A. I had no difficulty in telling which was which.

x-Q. 48. How old was the original liqueur which you tasted on that occasion?

2479 A I could not tell you.

x-Q. 49. Do you think it was 10 years, or not?

A. Yes.

x-Q. 50. Are you prepared to swear the other was 6 months old?

A. I have no hesitation in telling you that I could tell the difference.

x-Q. 51. You would be ashamed if you could not tell the difference under those circumstances?

A. I have spent all my life in doing so.

2480 x-Q. 52. And you have lost the whole of your life if you could not?

A. Yes, and I had better retire.

x-Q. 53. You also said you have tasted the Tarragona liqueur?

A. Yes.

x-Q. 54. How often have you tasted that?

A. Several times.

x-Q. 55. Have you tasted that without knowing what it was?

A. Oh, the Tarragona?

2481

x-Q. 56. Yes.

A. No, I have not tasted that blindfolded.

x-Q. 57. Should I be wrong in assuming that if you started with the Tarragona you started with the expectation of finding it the same as the old original?

A. We do not allow prejudice to stand in the way, we do everything we can to avoid prejudice.

x-Q. 58. I ask you whether you started with the expectation of finding it the same as the old original?

A. We have no prejudice. 2482

x-Q. 59. May I take it you object to answer the question. I ask you if you expected to find it the same as the old original and you refuse to answer the question?

A. We never allow any prejudice to stand in the way; we never start with the expectation of finding anything.

x-Q. 60. You told my friend when you tasted the Tarragona you allowed for the difference of age?

A. Yes. 2483

x-Q. 61. Did you find that the difference in the age showed itself?

A. Oh yes, distinctly.

x-Q. 62. The same as it did in the other case?

A. There is a difference in age of course. The two samples were young.

x-Q. 63. Did you find an herby taste in the Tarragona?

A. Yes.

x-Q. 64. Did you have any difficulty in telling the 2484
difference between the Tarragona liqueur—the new and the old?

A. No.

x-Q. 65. And the difference between the Tarragona liqueur and the old was as marked as it was in the liquidator's liqueur?

A. No, it was not so marked.

x-Q. 66. Do you find, according to your experience as a dealer—you are a dealer I think?

A. I am a broker—I am a dealer if you like.

2485

x-Q. 67. You used the expression "People write for the old liqueur"?

A. Yes.

x-Q. 68. Write to you for it, you mean?

A. Yes.

x-Q. 69. They know the difference between the old liqueurs as well as the new ones, do they not?

A. Yes.

x-Q. 70. Therefore, what you are saying about the
2486 inferiority of one of these two liqueurs—I am using the expression "inferiority" for convenience sake—comes to this, that according to your judgment when the time comes when they are as old as the old liqueur is now, they will be the same, or do you say they will not be the same?

A. I say the Tarragona will be the same, and I have no hesitation in saying that the new one, the liquidator's liqueur, will be the same also.

x-Q. 71. Can you tell the difference?

2487 A. Yes, it lacks now the flavours that there are in the Monks' liqueur.

x-Q. 72. Is there any difference in the spirit?

A. No, it is not so much in the spirit, it is more in the flavour.

x-Q. 73. I thought you said just now that there was not so much demand for the liquidator's liqueur as for the Monks' liqueurs: can you explain why that is?

A. No.

2488 x-Q. 74. Cannot you say why there should not be such a demand for the liquidator's liqueur as for the Monks' liqueurs?

A. No, I cannot tell you.

x-Q. 75. You know when the Monks went to Tarragona and started there, they at once set to work to stop the liquidator's liqueurs in the Customs?

A. I do not know that.

x-Q. 76. Supposing they had stopped the liquidator's liqueurs when they had been sent to this country

2489

so that none could have been sold, would that have helped or prevented the sale of it?

A. It would not have helped it, it would have hindered it.

x-Q. 77. And if in addition to that they brought an action against the liquidator, and endeavored to stop the sale of his liqueur, do you think that would have hindered the sale or helped the sale?

A. I think it would hinder it.

x-Q. 78. And if all these things got into the wine 2490
trade circulars do you think that would help it?

A. I should think it would hinder it.

x-Q. 79. And supposing Messrs. Riviere sent to you notices warning people that the sale of the liquidator's liqueurs would be an infringement of the Register of the old liqueur, and prevented people selling the liquidator's liqueurs, do you think that would help the sale?

A. No, I think it would hinder it.

x-Q. 80. And from what has come to your knowl- 2491
edge the sale of the liquidator's liqueur has done pretty well?

A. Yes.

x-Q. 81. I suppose you are a friend of Mr. Riviere?

A. No, not particularly.

Mr. William George Masters, being duly and publicly sworn is examined by Mr. J. C. Graham, on the part of the Plaintiff, and doth depose and say as 2492
follows:—

Q. 1. (By the Commissioner) What is your full name?

A. William George Masters.

Q. 2. Your age?

A. 44 years and upward.

Q. 3. Occupation?

A. I am a Director of W. H. Chaplin & Co., Wine and Spirit Brokers, and Dealers, and Merchants.

Q. 4. Your business address?

2493

A. Mark Lane.

Q. 5. (By Mr. J. C. Graham) I will ask you if you are a friend of Mr. Riviere, because that is a fault according to my friend?

A. I have known Mr. Riviere over 30 years—all the time I have been in business.

Q. 6. You are a Director of W. H. Chaplin & Co., Ltd.?

A. Yes.

2494 Q. 7. And you have had a large experience in the purchasing and selling of liqueurs?

A. Yes, quite large.

Q. 8. Over some years?

A. We have purchased and sold liqueurs all the time.

Q. 9. I think there are many other firms you have purchased liqueurs from?

A. Yes.

Q. 10. Have you purchased liqueurs from Messrs.
2495 Idle Chapman & Co.?

A. I have.

Q. 11. Do you remember making an enquiry of Idle Chapman & Co. for 50 cases of the old original Chartreuse. Do you remember that at one time you were contemplating purchasing 50 cases of the original Chartreuse made by the Monks from Idle Chapman & Co.?

A. No, I would not put it in that way.

Q. 12. Just put it in your own way.

2496 A. I heard on the market that Messrs. Idle Chapman & Co. had some of the original Chartreuse—had a large parcel of the original Chartreuse. "The original Chartreuse" we call it made by the Monks, so I went and called upon Mr. Garratt, he is the Managing Director of Idle Chapman & Co., and I saw Mr. Garratt, and I think he said he had four or five hundred cases, or dozens, but he must look into it to see if he could spare us any. I said "Well, I think we are a sufficiently important house that you should in your own interests let us have some of that parcel to

2497

distribute". I went away and within a few days called again upon Mr. Garratt, and he took down particulars of an order; I made up an order for 50 dozens; I think the particulars were 35 cases of Litres and 15 of half Litres, but I will not be positive as to that--50 altogether, which Mr. Garratt accepted.

Q. 13. Personally you wanted them delivered, I think?

A. Yes, and I have been waiting for delivery ever since. 2498

Q. 14. Have they ever told you why they have not delivered them?

A. I called down there within say three months, but after three months, or about three months afterwards, I heard it was spoken of generally in the market that Mr. Garratt had not got that parcel.

MR. J. C. GRAHAM: That is not evidence what somebody else said to him.

2499

Q. 15. What did he himself say?

A. I have not seen Mr. Garratt.

Q. 16. What was the date of this, roughly speaking?

A. 18 months to two years ago.

CROSS-EXAMINATION BY MR. L. B. SEBASTIAN on the part of the defendant.

x-Q. 17. I suppose Mr. Masters your visit to Mr. Garratt was to make a *bona fide* trade enquiry? 2500

A. Yes, I called.

x-Q. 18. You were not there really on your own account?

A. Certainly.

x-Q. 19. You had heard that some of the original Monks' liqueurs were to be had there?

A. Yes, I heard he had a parcel to sell and had sold some.

x-Q. 20. And I suppose you in common with others were anxious to get hold of it?

2501

A. Yes, we were anxious to get hold of it.

x-Q. 21. I suppose the liqueur originally manufactured by the Monks at the Monastery was rather prized ?

A. Yes we are getting a good price for it.

x-Q. 22. If you could get a supply of that you would do well ?

A. Yes at a price. If we could buy at a price we have got buyers.

2502 x-Q. 23. When you went to Mr. Garratt you did not suppose that he had all this stock in private cellars I suppose ?

A. No it was on the other side he said.

x-Q. 24. What you supposed was that it was to be at the Monastery or was in charge of the liquidator ?

A. I understood that after all there was found to be a good parcel of original Chartreuse at the Monastery.

x-Q. 25. And what you expected was that if Mr. Garratt was able to sell that quantity that you asked
2503 for he would get it for you and you would have it ?

A. No, I understood Mr. Garratt booked us 50 dozens.

x-Q. 26. But he did not undertake to give them to you if he had not got it to distribute ?

A. But he had got it to distribute.

x-Q. 27. Is that so ?

A. Certainly. 50 dozens were booked to us and 50 dozens we were going to have. He was going over there, he was going to attend to the shipment and
2504 to put the whole thing in train.

x-Q. 28. He was going over there to see what there was on that side ?

A. No, he was going to see to the shipment. He has had a lot of things to do for the liquidator, he told me that, but with regard to the shipment I understood he was going over there to arrange for the shipment and we should get in due time our 50 dozens.

x-Q. 29. You had no doubt at that time that he would be able to get it for you ?

A. No, I did not doubt it at the time.

2505

x-Q. 30. Of course Mr. Garratt could only know what he was told ?

A. I presume that is so. I understood that he had been over there, he told he so. I do not know whether he had seen them but the result of that was I think that he had 400 or 500 cases to dispose of.

x-Q. 31. You understood that that was what he had to dispose of and you were going to get some of it ?

A. Yes, we were going to get 50 dozen, if he fulfilled 2506 the order.

x-Q. 32. If it turned out that he or somebody else had made a mistake and that that quantity of liqueur was not there you would not have blamed him for not delivering it ?

A. I should have sent him in a large claim for non-delivery.

x-Q. 33. You know that Mr. Garratt has stated that there was no definite sale ?

A. Yes, I have heard so. 2507

x-Q. 34. Did you ever ask for delivery of this ?

A. I called down there three or four times.

x-Q. 35. Will you say yes or no?

A. Yes, I did.

x-Q. 36. Now say anything more you like ?

A. I was going to say I have called down there several times and did not see Mr. Garratt to ask him.

x-Q. 37. Whom did you ask ?

A. A clerk in his office.

x-Q. 38. What did he say ? 2508

A. He was going to ask Mr. Garratt.

x-Q. 39. Did you press the matter again ?

A. No I have not pressed it again because I have heard indirectly that Mr. Garratt had not that parcel.

x-Q. 40. And it not being there you accepted the situation ?

A. Yes, we have, I have sent in no claim yet.

x-Q. 41. You did a wise thing perhaps ?

A. I do not know.

x-Q. 42. Have you bought any of the Spanish liqueur ?

2509

A. Yes, a lot of it.

x-Q. 43. What do you call it?

A. We call it "Péres Chartreux."

x-Q. 44. Have you ever been present in a restaurant when it has been supplied?

A. No, I have not, I do not take liqueurs, I never ask for them.

x-Q. 45. You do not ask for it?

A. No, I never ask for liqueurs in a restaurant.

2510 x-Q. 46. What do you say about the Spanish liqueur? Do you say that is like the older liqueur?

A. Yes, like the old, the only difference that is apparent is the difference of age.

x-Q. 47. Have you tried the liquidator's liqueurs from the Monastery too?

A. Oh yes, I have looked at that and tasted them in my professional capacity blindfolded and not blindfolded.

x-Q. 48. What do you mean by blindfolded?

2511 A. Well, they have a screen and bottles are put behind that screen, and when you are ready for tasting, or before you are ready for tasting, a screen of cloth is let down so that the bottles are behind it and you cannot see anything of the bottles.

x-Q. 49. At the time you made the experiment you did not know which was which?

A. No.

x-Q. 50. What was the result of your investigation, did you find much difference in the green?

2512 A. I found an immense difference in the yellow—a small difference only in the green. The yellow was a splendid imitation or whatever word you like to use.

x-Q. 51. "Reproduction" would perhaps be a better word?

A. I do not think it could be a reproduction because there was so much age, therefore you have that in favour of the liquidator's stock.

x-Q. 52. You know I suppose that the liquidator did not make the green until long after he made the yellow?

2513

A. That is quite right, that is evident.

x-Q. 53. The result of your testing I take it was that the green was not so gaining by maturity as the yellow?

A. I do not think it was any question of age, but that is my opinion.

x-Q. 54. Did you find the same taste of herbs, and so on?

A. No, I did not. The green is a very unhappy mixture compared with the green of the Monks. 2514

x-Q. 55. Did you form any opinion about the spirit which it contained. Was it spirit from Spain or France?

A. That is beyond me, I cannot tell you.

x-Q. 56. But I understand you are an expert?

A. Yes, I am but I think that is beyond me.

x-Q. 57. How long have you done this tasting?

A. I have tasted these liqueurs altogether I should think about 10 times.

x-Q. 58. When was the last time? 2515

A. The last time was two or three days ago.

x-Q. 59. I suppose you would be prepared to find this liqueur of the liquidator to be coming nearer to the old one in proportion to the age?

A. You are speaking of the yellow?

x-Q. 60. Yes, I will take the yellow?

A. No, I regard the liquidator's yellow stock as having more than the age which was spoken to by you and Mr. Restell just now. You referred to it as only having 18 months age. I should have thought that 2516 this yellow liquidator's stock was made a good long time before 1904. It must have been old material.

x-Q. 61. Do you think that would have been occasioned by using old brandy?

A. Or old spirit.

x-Q. 62. Or old spirit?

A. It is the same thing.

x-Q. 63. I suppose the liquidator would be entitled to some credit for having used old spirit?

A. Yes.

2517 x-Q. 64. You think that some of the liquidator's liqueurs has undoubtedly the benefit of old spirit ?

A. Yes, that is my main point.

x-Q. 65. You have not come here to talk on this point particularly ?

A. I was consulted on the question of value.

x-Q. 66. (By Mr. Graham). What you really meant was that these liqueurs were not bad efforts for a liquidator ?

2518 A. Well the green was a very bad one but the yellow was a very good attempt to follow.

x-Q. 67. It was not very bad for a liquidator ?

A. No.

Ralph Davis, being duly and publicly sworn, is examined by Mr. J. C. Graham on the part of the plaintiff and doth depose and say as follows :

Q. 1. (By the Commissioner) What is your full
2519 name ?

A. Ralph Davis.

Q. 2. Your age about ?

A. 49 years and upward.

Q. 3. Your occupation ?

A. Wine merchant.

Q. 4. Your business address ?

A. 72 Mark Lane.

Q. 5. Are you trading in your own name?

A. No, as W. H. Bauly, Limited, I am a director of
2520 that Company.

Q. 6. (By Mr. Graham) We do not require to mention names for this purpose. Do you remember upon one occasion writing to a well known firm that dealt in liqueurs in London asking for two dozen litres of Chartreuse ?

A. Not writing, asking by telephone—8 litres.

Q. 7. Of Chartreuse ?

A. Yes, they are made in different sizes.

Q. 8. How many bottles did you ask for ?

A. A half dozen.

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Q. 9. And the bottles were delivered to you some days afterwards?

A. I think the same day.

Q. 10. Then I think you discovered that the liqueur which had been delivered to you was not the liqueur of the Monks, but the liqueur of the liquidator?

A. Yes.

Q. 11. I do not think we need mention names, those are the names (handing a list to Mr. Sebastian). We do not suggest that there was anything but a mistake, 2522 he is only saying he got the wrong thing.

CROSS-EXAMINATION BY MR. L. B. SEBASTIAN on the part of the defendant:

x-Q. 12. What was the order for?

A. The order was for the original Chartreuse, meaning thereby the Chartreuse made by the Monks before their expulsion from France.

x-Q. 13. You say they delivered something else?

A. Yes, they delivered the liquidator's. 2523

x-Q. 14. How long ago was this?

A. Last September.

x-Q. 15. Then at that time any Chartreuse that was supplied must have come from the liquidator's possession and not from the possession of the Monastery, must it not?

A. There is plenty of the original Chartreuse on the market even now.

x-Q. 16. It is very much sought for?

A. Yes. 2524

x-Q. 17. What you have come to tell us is nothing more than this, that you asked for original Chartreuse and somebody gave you something which was not original Chartreuse?

A. Yes.

MR. SEBASTIAN: I am obliged to you for the information.

The Commission is now closed.

2525

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Court Rooms thereof, in the Post Office Building, in the Borough of Manhattan and City of New York, this 1st day of April, 1907.

Present: Hon. E. Henry Lacombe, 2526
U. S. Circuit Judge.

Pere Alfredo Luis Baglin, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said Order,	In Equity. "Chartreuse."
vs.	2527
Cusenier Company.	

Order Re Amendment.

Now, on motion of Elisha K. Camp, Esq., solicitor for complainants, solicitors for defendant consenting thereto, it is this day

Ordered that in the title to the bill of complaint 2528 herein the description of the complainant as "Procureur" be changed to "Superior General" so that the title shall read "Pere Alfredo Luis Baglin, Superior General of the Order of Carthusian Monks," etc.; that the same change be made in the second line of the preliminary paragraph, in the fourth line of paragraph numbered II, and in the last line of paragraph numbered IV of said bill, and in the description following the signature of said Baglin to the bill of complaint; and that the same change be made wherever required

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in all further pleadings and proceedings herein; and it is further

ORDERED that the aforesaid changes be made *nunc pro tunc* and that they in no manner affect the subsequent pleadings and proceedings herein.

(Sgd.) E. H. LACOMBE,
U. S. Circuit Judge.

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We hereby consent to the entry of the foregoing order.

(Sgd.) HOWSON & HOWSON,
Solicitors for Defendant.

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IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said Order,	In Equity. (Chartreuse).
vs.	
CUSENIER COMPANY.	

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COMPLAINANTS' PRIMA FACIE PROOFS TAKEN IN UNITED STATES.

Office of Philip Mauro, Esq., Tribune Building, New York City, April 18, 1907, at 11 a. m.

Testimony for final hearing taken on behalf of complainants, before JOHN A. SHIELDS, ESQ., Standing Examiner of this Court, under the statutes and rules of this Court.

2536

Met pursuant to agreement.

Present :

R. L. SCOTT, ESQ., representing PHILIP MAURO, ESQ., for complainants ;

HUBERT HOWSON, ESQ., for defendant.

Complainants' counsel produces ordinary Patent Office printed copies of four trade-marks, and the same are offered in evidence as

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Complainants' Exhibit, Registered Trade-mark No. 3,377 ;

Complainants' Exhibit, Registered Trade-mark No. 10,897 ;

Complainants' Exhibit, Registered Trade-mark No. 3,989 ;

Complainants' Exhibit, Registered Trade-mark No. 10,898 ;

and it is stipulated by and between counsel for
2538 the respective parties hereto that the said copies shall have the same force and effect as the originals or duly certified copies thereof.

Thereupon HENRY BATJER, a witness produced on behalf of complainants, being duly sworn, deposes as follows, in answer to interrogatories by Mr. Scott :

Q. 1. Will you please state your name, age, residence and occupation ?

A. Henry Batjer ; seventy ; residence, 11 East 81st,
2539 New York City ; occupation, importer of wines and liqueurs.

Q. 2. What is your connection with the house of Batjer & Co. ?

A. I am one of the partners, the senior partner.

Q. 3. How long have you or your house been representatives of the Carthusian Monks for the sale of their Chartreuse in the United States ?

A. About twelve years.

Q. 4. Can you produce a sample of the Chartreuse
2540 as formerly put out by the complainants ?

A. Well, I do it herewith, this bottle here is one of them.

Counsel for complainants offers the bottle in evidence as "Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co."

Counsel for defendant produces a bottle and stipulates that this is one of the bottles of liqueur received by the defendant from the liquidator, H. Lecoutieur, of the Congregation

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of the Chartreux in the latter part of 1904, and it is further stipulated that the defendant offered it for sale and sold in the United States liqueur in bottles identical with the bottle now produced, and that such offering for sale and sale was prior to the entry of the injunction order in January, 1905, in this cause.

It is further stipulated that since the entry of the injunction order *nisi*, July 20, 1905, defendant herein has not sold or offered for sale 2542
liqueur under the said trade-marks either with or without the sub-label authorized by this Court, and it is agreed that Jules Aubry, Vice-President of the Cusenier Company, if called, would testify that the reason why his company has not used said sub-label is that it was not authorized to do so by the liquidator, Mr. H. Lecouturier.

Complainants' counsel offers in evidence the bottle just produced by counsel for defendant as 2543
" Complainants' Exhibit, Defendants' Liqueur."

Complainants' counsel produces a circular letter dated New York, October 25, 1904, and signed by Jules Aubry and Cusenier Company, and it is stipulated by counsel for defendant that this is a copy of a circular letter sent out to liqueur dealers and the trade generally throughout the country, in October, 1904, by the defendant herein. Counsel for complainants offers this letter in evidence as " Complainants' 2544
Exhibit, Aubry-Cusenier Co. Letter."

Q. 5. I show you this circular letter just offered in evidence, and ask if you have ever before seen a copy of same ?

A. I have seen it.

Q. 6. How was this letter brought to your attention ?

A. Well, I noticed it as soon as it came out, customers received it, it was sent generally to our cus-

2545

tomers who called our attention to it and they wanted to know if it was the genuine Chartreuse, that made by the Monks.

Q. 7. What was the effect of this letter on your customers?

A. Well, a good many would buy it and it would have a bad effect on our customers. I said, it had a bad effect on our business; thinking that really that was the genuine Chartreuse, several of our cus-
2546 tomers cancelled their orders and it damaged our business.

Q. 8. Can you produce any letters from your customers cancelling orders given you for Chartreuse?

A. Well, we received a number of letters and have some of them here, given to you at the time.

Q. 9. I show you transcript of record herein, printed under direction of the Clerk of the Court of Appeals, which contains a second Batjer affidavit with copies of two letters annexed thereto, and ask you if these are
2547 some of the letters to which you refer?

A. They are the copies.

Counsel for complainant offers in evidence the Jules C. Koenig letter, printed on page 20 of the said transcript, as "Complainants' Exhibit, Koenig Letter"; and also offers in evidence the letter on the following page of the said transcript, as "Complainants' Exhibit, C. Jevne Co. Letter". It is stipulated that these
2548 copies may be used in evidence with the same force and effect as the originals, subject to correction by the originals upon due notice.

Q. 10. Previous to the beginning of 1905, the time this suit was begun, can you give a general idea as to the quantity of Chartreuse sold by your house each year?

A. About 4000 cases a year.

Q. 11. How many bottles in a case?

A. 12 quart bottles or 24 pints.

2549

Q. 12. To what do you attribute the success of this article and the public demand therefor?

A. Well, it was the excellence of the quality and our efforts to advertise it in different ways.

Q. 13. Did you expend any considerable amount of money in advertising this liqueur?

A. It cost us every year thousands of dollars, principally for travelling salesmen offering and selling the goods.

Q. 14. Were you repaid for your efforts and expendi- 2550
tures in advertising and selling this article?

A. It paid us, the profits paid us, although they were not so large, the profits, but of course the reputation it gave us in having the agency for the Chartreuse, it brought in other trade besides, the best class of people had to buy it of us. It gave us an entree into the best class of trade.

Q. 15. What, in your opinion, do the trade and the public at large understand by the name "Chartreuse"?

2551

Objected to as incompetent.

A. "Chartreuse" is considered the finest liqueur made and it is made by the Monks, the Carthusian Monks.

Q. 16. It has been asserted in different ways, that the Monks have abandoned the dress and label represented by Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co. What can you say as to this?

A. They have not abandoned it, nor thought of 2552
abandoning it.

Q. 17. What testimony can you give in support of this assertion?

A. We still import it since that time, in smaller quantities, we have no stock of it here now but we have taken and filled orders for it, now and then.

Q. 18. To what do you attribute the success of Chartreuse and the public demand therefor?

A. Well, it is the excellence of the quality and the honesty of the Monks that everybody has the confidence in, the honesty of the Monks.

2553

CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 19. During all the times that you have been selling in the United States Chartreuse in bottles bearing the marks which appear in Exhibit Bottle of Chartreuse sold by Batjer & Co., has it been your invariable custom to have as part of the label this statement appearing in this exhibit: "Agents for United States Batjer & Company"?

2554 A. Not at the commencement because we had the agency through Mr. Joseph Boll for about three years.

x-Q. 20. After that, that is, beginning about 1898, you had the exclusive direct agency for the Chartreuse?

A. Yes.

x-Q. 21. And from that time forward and until the Monks removed their manufacture to Spain (Tarragona) you made it your universal practice to have the

2555 sub-label with your name on the Chartreuse put out in the United States, is that it?

A. Yes, sir.

x-Q. 22. I show you a bottle of liqueur, and I ask you how long you have been marketing that in the United States under the label appearing on it?

A. Since the Monks had to give up in France and move to Spain. I think we have been marketing it since the latter part of 1904.

2556 Counsel for defendant asks that the bottle produced and shown the witness may be marked for identification "Defendant's Exhibit, Complainants' New Label."

x-Q. 23. I will ask you to please read into the record the announcement at the foot of the label on this bottle which I have just shown you.

A.

"This liqueur is the only one identically the same as that made at the Monastery of

2557

the Grande-Chartreuse in France, previous to the expulsion of the Monks, who have kept intact the secret of its manufacture. It is now made by the same Monks in Spain, whence it is shipped direct to the United States through Messrs. Batjer & Cy, New York, sole agents for the sale of the products of the Pères Chartreux in United States.

Caution—None is guaranteed genuine in the United States, unless bearing the above label of 2558 which this notice forms part."

x-Q. 24. And in the label above the notice which you have just quoted, appears centrally a diamond in two colors and around this the following words :

"LIQUEUR
FABRIQUÉE A TARRAGONE
PAR LES
PÉRES CHARTREUX." 2559

is that correct ?

A. Yes.

x-Q. 25. I show you a price list of Batjer & Co. bearing the date March 1, 1905 ; was that issued by your firm at that time, March, 1905, and is it or not still your current price list ?

A. Yes, we issued it in March, 1905, and it is our present price list.

2560

Counsel for defendant asks that this price list be marked for identification in this case as "Defendant's Exhibit, Batjer Price List."

x-Q 26. I notice on pages 3 and 4 of this price list the offer of the Peres Chartreux Liqueur with a label the same as on Defendant's Exhibit, Complainants' New Label ; does this price list offer any other liqueur made by these Carthusian Monks ?

A. No, it does not.

2561

x-Q. 27. From the latter part of 1904 up to the present time you have advertised this Complainants' New Label very largely, have you not ?

A. We have.

x-Q. 28. Will you mention some of the principal periodicals or journals in which you have so advertised it with a cut of the label or a bottle bearing the label the same as Complainants' New Label ?

A. We have advertised it in magazines like Puck,
2562 and theatrical programmes, Riders' and Drivers', and a number of others.

x-Q. 29. Among which you would include Harper's Magazine, Harper's Weekly, Life, Town and Country, Scribner's Magazine, and the Century Magazine ?

A. Yes.

x-Q. 30. And you have also advertised this label in the Trade Journals ?

A. Well, very little. But we have it in Bonfort's and Mida's.

2563 x-Q. 31. Your principal advertisements then, have been in the periodicals of the character mentioned in my question 29, is that it ?

A. Yes.

x-Q. 32. When did you get your last shipment from abroad of liqueur put up in bottles having labels the same as that on Exhibit Bottle of Chartreuse sold by Batjer & Co.?

A. I think it was in 1902 or 1903 we got a large shipment that lasted us over a year, our books would
2564 show.

x-Q. 33. What is it that gives Chartreuse its peculiar flavor ?

Objected to as incompetent and not proper cross-examination.

A. The ingredients, I suppose.

x-Q. 34. And you know in a general way, do you not, that it is made up of brandy and extracts of herbs or plants which give it its flavor ?

2565

A. That is the way I understand it.

Cross-examination closed.

HENRY BATJER.

Adjourned to 2 o'clock.

2566

2 p. m. Session resumed.

ROBERT S. ELLIOT, a witness produced on behalf of complainants, being first duly sworn, testifies as follows:

Q. 1. Will you please give your name, age, residence and occupation?

A. Robert S. Elliot; age, thirty-eight; residence, Ossining, New York; occupation, Vice-President of J. & J. Eager Co., importers.

2567

Q. 2. What is the relative importance of your firm as compared to other houses in the same business?

A. It is about first grade, I should say. One of the large firms, but of course not as large as Park & Tilford.

Q. 3. Have you handled and dealt in Chartreuse, the liqueur manufactured by the Monks?

A. We have.

Q. 4. For about how long, and to what extent?

2568

A. I don't know how far we can go back, but a good many years.

Q. 5. Have you continued to sell Chartreuse during the last two or three years, that is, since the removal of the Monks to Spain?

A. We have.

Q. 6. What, in your opinion, do the public and the trade at large understand by the name "Chartreuse?"

Objected to as incompetent.

A. Chartreuse as manufactured by the Monks.

2569

Q. 7. To what do you attribute the public demand for Chartreuse ?

A. Chartreuse as is known as Chartreuse. As a liqueur. It is a high class liqueur.

Q. 8. Two years or more ago, at the time of bringing this suit, are you aware that there were circulated numerous articles in newspapers and also a circular letter by Cusenier Company, copy of which I now show you, with respect to what is the original and
2570 genuine Chartreuse ?

A. Yes, sir.

Q. 9. What was the effect of this question in the minds of your customers as shown by your sales ?

Objected to as incompetent.

A. Of no effect on our business ; the demand was for Chartreuse as supplied by the trade.

Q. 10. What do you mean by Chartreuse as sup-
2571 plied by the trade ?

A. Chartreuse known as yellow and green, manufactured and sold as such from France.

Q. 11. Who was it manufactured by, or supposed to be manufactured by ?

A. The Monks in France.

Cross-examination by Mr. Howson.

x-Q. 12. You understand a little French ?

2572 A. Very little.

x-Q. 13. You understand, do you not, that where this label on this Chartreuse bottle (Exhibit Chartreuse sold by Batjer & Co.) says " Liqueur Fabriquée a la Gde. Chartreuse " it means liqueur manufactured at La Grande Chartreuse ?

A. Yes, sir.

x-Q. 14. And the Grande Chartreuse, you have understood to be a place in France, have you not ?

A. I have understood it to be a place in France, the residence of the Monks.

2573

x-Q. 15. You say that you knew of the circular Exhibit Aubry-Cusenier Co. Letter ; how long have you been familiar with the tradition, we may call it, referred to on the last page of this circular, in the letter as follows : "As the Chartreux Fathers have so strongly and often affirmed, the plants gathered in this admirable domain derive from the ground aromas and qualities which are only found at the Chartreuse."

Objected to on the ground that it is assumed 2574
that there is such a tradition, when in reality the letter quoted from is merely the assertion of the liquidator.

A. Not being familiar with the location of the Grande Chartreuse, I always supposed the compound was a secret of the manufacturers.

x-Q. 16. Does your concern make liqueur?

A. No, sir.

x-Q. 17. Do you personally have anything to do with 2575
the manufacture carried on by your concern?

A. Oversee at times the blending and rectification, in the manufacture of whiskey.

x-Q. 18. Is it your understanding that liqueurs derive their peculiar qualities, or I should say flavors, or aromas, from the extracts which are combined with the brandy used?

A. Yes, sir.

x-Q. 19. And has it not come to your attention that
the representatives of the Monks have always claimed 2576
that Chartreuse derives its peculiar flavor or aroma from the plants used in combination with the brandy?

A. Yes, sir.

x-Q. 20. And have you not also understood, or heard it asserted, that the plants used in making Chartreuse were those gathered in the neighborhood of La Grande Chartreuse?

A. That I cannot say, not knowing.

x-Q. 21. To the best of your recollection, has all the Chartreuse which you have purchased as made in

2577

France, had labels on it including Batjer's name like this Exhibit Chartreuse sold by Batjer & Co.?

A. As made in France, yes.

x-Q. 22. And since these proceedings in Court you have been purchasing from Batjer & Co. liqueur with the same label that appears on this bottle, Complainants' New Label?

A. We have.

x-Q. 23. Can you recall about when you began to get
2578 this new label liqueur?

A. About two years and a half ago.

x-Q. 24. About when did you get from Batjer & Co. or any one else, the last lot of liqueur with the label the same as this bottle Chartreuse sold by Batjer & Co.?

A. About three years ago.

x-Q. 25. When you began to purchase this new label liqueur, did you take note of this notice on the bottom of the label?

2579 A. Yes, sir.

x-Q. 26. Are you familiar with the fact that Batjer & Co. have for the last two years and a half been advertising very largely this new label of theirs?

A. Yes, sir.

x-Q. 27. I will ask you to read into the record this notice on the bottom of Complainants' New Label.

A.

"This Liqueur is the only one identically the
2580 same as that made at the Monastery of the Grande-Chartreuse in France, previous to the expulsion of the Monks, who have kept intact the secret of its manufacture. It is now made by the same Monks in Spain, whence it is shipped direct to the United States through Messrs. Batjer & Co., New York, Sole Agents for the sale of the products of the Péres Chartreux in United States.

Caution.—None is guaranteed genuine in the United States, unless bearing the above label of which this notice forms part."

2581

x-Q. 28. And to-day if you wanted to be sure that you are geting liqueur made by the Carthusian Monks you would require this label Complainants' New Label, would you?

A. Yes, sir.

RE-DIRECT EXAMINATION:

Re-d. Q. 29. Who do you understand are the sole sales agents for the United States for the Charteuse 2582
made by the Monks?

A. Batjer & Co.

Re-d. Q. 30. If you should order from Batjer & Co. a case of goods and receive a case of bottles showing labels similar to Complainants' Exhibit, Chartreuse sold by Batjer & Co., would you not believe it was the Chartreuse of the Monks?

A. Had it Batjer & Co. on the label, the old exhibit, would judge it was an old lot of liqueur in this country manufactured by the Monks in France. 2583

Re-d. Q. 31. In the answer to one of the previous questions, you say you had always supposed the compound was a secret of the manufacturers. Do you attribute the quality of the article and the fact that thousands of bottles of it are consumed annually in this country wholly to the nature of the ingredients of the liqueur itself, or to the fact that it is made by the Monks under what you consider a secret process?

A. To the quality of the liqueur. 2584

Signature waived.

Thereupon JOSEPH HAAN, a witness produced on behalf of complainants, being first duly sworn, deposes as follows:

Q. 1. Will you please give your name, age, residence and occupation?

A. Joseph Haan, forty-three years old, residence 55

2585 West 33rd Street, New York, occupation, wine merchant and restauranteur.

Q. 2. You are the brother of and associated with Mr. R. M. Haan, proprietor of the St. Regis Hotel and of a restaurant here in the City bearing his name?

A. Yes, Mr. R. M. Haan is President of the concern and I am Secretary.

Q. 3. Have you ever handled and sold Chartreuse and, if so, for about how long?

2586 A. Yes, for about twelve years.

Q. 4. Have you continued to sell Chartreuse since the removal of the Monks to Spain?

A. Yes, known as Liqueur Peres Chartreux.

Q. 5. To what do you attribute the public demand for Chartreuse?

A. Chartreuse is the liqueur known as made by the Monks.

2587 CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 6. When did your Company last get any Chartreuse under the label shown on this bottle, Exhibit Chartreuse sold by Batjer & Co.?

A. I cannot remember the date. Since they stopped making in France and went to Spain.

x-Q. 7. And since they stopped making in France and went to Spain you have been handling Liqueur Peres Chartreux under the label Complainants' New Label?

2588 A. We did handle some of the Cusenier Co. Chartreuse but the public refused it. We have been handling this Peres Chartreux furnished by Batjer & Co.

x-Q. 8. You have been handling this Peres Chartreux for about two years, have you not?

A. For about two years, I should think, ever since they began to put it out.

x-Q. 9. And it has always had on it the label same as this complainants' label, has it?

A. Yes.

2589

x-Q. 10. Liqueurs derive their special aromas from the particular extracts of plants used in conjunction with the brandy, do they not?

Objected to as leading.

A. I haven't the slightest idea how they are made.

x-Q. 11. Are you not familiar with the fact that the thing which gives Chartreuse its peculiar aroma or flavor is the combination of extracts of plants which 2590
are used in conjunction with the brandy?

A. I don't know how they are made, that is the Monks' secret.

x-Q. 12. Then you mean to be understood as saying that you are not familiar with the fact that either Chartreuse or any other liqueur derives its characteristic flavor or aroma from the extracts used in combination with the brandy?

A. I do not know how to make liqueurs, but the general public wants Chartreuse made by the Monks. 2591

x-Q. 13. When this Complainants' New Label came out about two or three years ago did you take notice of this announcement on the bottom of the label?

A. Yes, I was notified. Yes, I knew of the label.

RE-DIRECT EXAMINATION.

Re-d. Q. 14. You have said that you procured and offered for sale some of this liqueur put out by the Cusenier Co.? 2592

A. Yes.

Re-d. Q. 15. But that the public refused to accept or to drink it?

A. They refused, they said it did not taste like the old one.

Re-d. Q. 16. How did you happen to get some of this liqueur from the Cusenier Co.?

A. They came around, as I remember, and said they were the agents for Chartreuse.

Re-d. Q. 17. And when you bought this liqueur

2593 from them you were under the impression that you were buying Chartreuse made by the Monks?

A. Yes.

RE-CROSS EXAMINATION.

Re-x-Q. 18. Can you tell me the name of the person who sold you this liqueur for Cusenier Co.?

A. I think Dresduer, or some such name.

2594 Re-x-Q. 19. Can you give me the name of any person to whom you sold any of the Cusenier Chartreuse?

A. I don't know their names, the complaint came through the bar-keeper. It was not so smooth.

Signature waived.

And thereupon ALBERT M. HIRSHFELD, a witness produced on behalf of complainants, being duly sworn, deposes as follows:

2595 Q. 1. Please state your name, age residence and occupation?

A. Albert M. Hirshfeld; age, sixty-four; residence, 4 West 105th Street, New York City; occupation, Manager of the Wine Department of Acker, Merrill & Condit Co.

Q. 2. Does your company deal in Chartreuse?

A. They do.

Q. 3. For how many years have they been dealing in this article?

2596 A. They were established in 1820 and I suppose have been dealing in it right along.

Q. 4. Are you aware of the fact that the Monks were driven out of France and established a factory in Spain?

A. Yes, sir.

Q. 5. Since the establishment in Spain, have you continued to deal in Chartreuse?

A. I have.

Q. 6. To what do you attribute the public demand for Chartreuse?

2597

A. To the old established article, very well known and very largely consumed.

Q. 7. To what do you attribute the fact that it is so largely consumed?

A. The well established renown of the article itself.

Q. 8. What, in your opinion, is the idea of your customers as to the origin or source of Chartreuse?

Objected to.

2598

A. It has always been looked upon as the product of the Carthusian Monks.

CROSS-EXAMINATION.

x-Q. 9. Since the establishment of the manufacture of Peres Chartreux in Spain it has been put out under this label on this bottle Complainants' New Label, has it not?

A. Yes. 2599

x-Q. 10. And for how long a time has complainants' new label been in use?

A. I couldn't say, but perhaps two years.

x-Q. 11. And since you began to get this Liqueur Peres Chartreux have you purchased Chartreuse under the label on this bottle Chartreuse sold by Batjer & Co.?

A. No, I think not, we have only bought Peres Chartreux since they put on the new label.

x-Q. 12. At the time Complainants' New Label came 2600
out did you take notice of this announcement on the bottom of the label?

A. Oh, yes.

x-Q. 13. And if to-day you wanted to be sure you would get a liqueur made by the Carthusian Monks would you require this new label?

A. Most assuredly.

x-Q. 14. Is it your understanding that liqueurs derive their special flavors or aromas from the extracts of the plants used in conjunction with the brandy?

2601

A. The general idea is that the recipe of the Monks is one that is not known to the public, but has always been looked upon as the genuine.

x-Q. 15. I am not asking you as to what particular ingredients are used nor of the Chartreuse alone. I was asking as to liqueurs in general. Please read my question again.

Question objected to as immaterial.

2602

A. Each liqueur stands on its own merits, and is produced from different plants. Recipes of liqueurs are not generally known by the public.

x-Q. 16. Has it been your understanding conveyed to you by representatives or agents of the Monks or their agents in this country, that the Chartreuse has derived its peculiar flavor or aroma from the extracts of plants gathered in the neighborhood of La Grande Chartreuse in France?

2603 A. I don't think we ever went into that question, we bought the Chartreuse on its merits as the product of the Carthusian Monks, the recipe of which we have always understood was a secret.

x-Q. 17. You have always understood, of course, that as stated in French on the label of the Chartreuse as made in France that it was made at the Grande Chartreuse in France?

A. Yes, I did.

2604 RE-DIRECT EXAMINATION.

Re-d. Q. 18. While you had understood that this liqueur was made at the Grande Chartreuse in France, do you attribute its fame and popularity to the fact that it was made in France, or to the fact that it was made by the Carthusian Monks?

A. It was absolutely immaterial to us where it was made so long as it was made by the Carthusian Monks by the old recipe.

Signature waived.

2605

And thereupon LOUIS NOVA, a witness produced on behalf of complainants, being duly sworn, deposes as follows:

Q. 1. Please state your name, age, residence and occupation?

A. Louis Nova; age, forty-two; residence, 63 East 74th St., New York City; occupation, partner in the firm of Batjer & Co., importers and sellers of wines and liqueurs.

Q. 2. How long have you been with Batjer & Co. 2606
and their predecessors?

A. I have been there in all about 28 years. Both as employee and partner.

Q. 3. I show you Complainants' Exhibit, Aubry-Cusenier Co. Circular Letter, and ask if you have seen copies of this letter heretofore?

A. Any number of them.

Q. 4. About when and where?

A. About the Fall of 1904, among all the larger wine and liqueur houses here, also in Paterson and 2607
Newark, also in Brooklyn.

Q. 5. Are you the member of the firm of Batjer & Co. who interviews and sells to the larger liqueur houses and consumers here in the City?

A. Yes, sir.

Q. 6. What was the effect of the circular letter just referred to on your customers?

A. It had the effect of mixing up in their minds the genuine article as made by the Monks, with that offered by the Cusenier Co., and some had gone so far as to 2608
place orders for this article with Cusenier Co., and upon my calling upon them and ascertaining the facts, some put this question to me: 'All we wish to know, Mr. Nova, are your goods the genuine goods made by the Monks, if so send me quantity so and so'.

Q. 7. What was the effect at that time on your sales?

A. It hurt us very materially.

Q. 8. To what do you attribute the public demand for and popularity of Chartreuse?

2609 A. For various reasons. Firstly, the article being a liqueur which stands all by itself, possessing certain aromatic characters, and it being known as being made by the Carthusian Monks.

Q. 9. What can you say with regard to whether or not the Monks, since their establishment was started in Spain, have abandoned the old label under which their liqueur has been sold for so many years?

A. Well, they have not abandoned their label, I
2610 sold some of these goods last summer, several lots, I took special orders on them. I should say I delivered those goods last summer, they were ordered earlier than the summer.

Q. 10. Do you still fill orders for goods carrying this old label?

A. Yes, sir.

CROSS-EXAMINATION BY MR. HOWSON:

2611 x-Q. 10. To whom did you deliver Chartreuse last summer under the old label?

A. Du Vivier & Co., 50 Warren Street, and to Chas. Bellows, 51 New Street.

x-Q. 11. How much Chartreuse under the old label did you deliver to each of these parties?

A. I think 10 cases to each.

x-Q. 12. Prior to that time, when had you delivered any Chartreuse under the old label?

A. We made several deliveries, I could not give you
2612 the dates.

x-Q. 13. Was it in the summer of 1905?

A. I said before I could not give the exact date, I don't remember. Later than that I should judge.

x-Q. 14. I would ask you to look that subject up.

x-Q. 15. Now please tell me where you got that Chartreuse that you sold under the old label in the summer of 1906?

A. It was shipped to us by the Carthusian Monks.

x-Q. 16. And those bottles which you sold to Bellows and Du Vivier in the summer of 1906 had a label

2613

on the same as the label on this bottle Exhibit Chartreuse sold by Batjer & Co.?

A. Some of them were the same, some did not have the word "France" on; they may have had "Tarrogona, Spain," but they all had the important part of the label, above the word "France"; that is, that part of the label which was always put on by the Monks themselves while they were in France.

x-Q. 17. Did you receive those bottles from the Chartreux themselves or from the Union Agricola? 2614

A. Well, we got all our goods from the Union, I couldn't answer the question without looking it up.

I will ask you to look it up.

x-Q. 18. Have you any information as to whether the liqueur that you received from Spain and sold to Du Vivier & Co. and Bellows was made at Tarragona?

A. I would have to look that up.

I will ask you to look it up.

x-Q. 19. The aromatic characters given to Chartreuse 2615 as mentioned in your answer to Q. 8 are due to the use of the extracts of plants employed, are they not?

A. Yes, sir.

Adjourned to 10 o'clock, April 19, 1907.

April 19, 1907.

Met pursuant to adjournment. 2616

Present: Counsel as before.

Cross-examination of Witness Nova, Continued:

x-Q. 20. If you have looked up the quantity of Chartreuse which you sold under the old label to Du Vivier & Co. and Charles Bellows in the summer of 1906, how much did you find?

A. I find two cases to each.

x-Q. 21. And the date was what?

2617

A. During the summer of 1906, I think July, 1906, that was the time of delivery.

x-Q. 22. Did you find when you took the orders for those cases?

A. I could not say exactly, a short time before. I didn't look that up.

x-Q. 23. Will you please explain what you mean by saying you took "special orders" for these particular goods?

2618 A. As we did not have the particular style of packages on hand at that time we took a special order for them.

x-Q. 24. By particular style of package, you mean Chartreuse under the old label?

A. Yes, sir.

x-Q. 25. Did Du Vivier & Co. and Charles Bellows ask that you supply them with Chartreuse under the old label?

A. Yes, sir.

2619 x-Q. 26. Did you offer them at that time Liqueur Peres Chartreux?

A. Well, I can't remember, we were offering both all the time.

x-Q. 27. Did you look up the question as to whether you ordered these four cases from the Union Agricola?

A. They were shipped to us direct by the Monks.

x-Q. 28. From Tarragona?

A. Yes, sir.

2620 x-Q. 29. To whom did you send the order for these four cases?

A. We do all of our business through Brezun & Co., Marseilles, distributors for the world for the Monks, as I understand it.

x-Q. 30. Can you give me the terms of the order which you sent to Brezun & Co. for those four cases?

A. What do you mean by "terms"?

x-Q. 31. The form of the order?

A. We have regular printed forms for all our orders, which we send to all our shippers.

x-Q. 32. And you keep copies of them, do you?

2621

A. Yes, sir.

x-Q. 33. Are they in your charge?

A. Well, in our office, in charge of our clerks.

x-Q. 34. They are within your control, are they?

A. In the control of Batjer & Co., yes.

x-Q. 35. I will ask you to please produce the copy book containing those four orders for those cases.

A. Yes, sir, I will try to.

x-Q. 36. When prior to the summer of 1906, and after January 1, 1905, did you sell liqueur Chartreuse under 2622 the old label, and to whom?

A. We have been selling Chartreuse under the old label ever since the Monks left France, and are offering it to-day.

x-Q. 37. That does not answer my question, when last prior to these sales to Du Vivier & Co. and Charles Bellows, did you sell Chartreuse under the old label?

A. I cannot answer that question exactly, for we keep all our sales together under one heading, for both labels. 2623

x-Q. 38. Can you mention any sale of Chartreuse under the old label in 1906 other than the ones you have mentioned to Du Vivier & Co. and Charles Bellows?

A. I cannot offhand, no.

x-Q. 39. About how many cases of Chartreuse did you sell in 1902?

A. I cannot answer that question offhand.

x-Q. 40. Can you not answer it approximately?

A. No, because I do not know exactly. 2624

x-Q. 41. I do not ask you exactly, can you give it to me within a thousand cases?

A. Well, I should say between four and five thousand cases a year. I am simply guessing, for I do not know exactly.

x-Q. 42. Have you any explanation to offer to attempt to reconcile what you have testified this afternoon with regard to the offering of both styles of label, with the statements at the bottom of this label Complainants' New Label?

2625

A. It does not say anything about the label, it talks of the liqueur, not the label. Well, I can further explain that by the fact that the Monks and Batjer & Co., as their agents in this country, are pushing the sale of this liqueur under this New Label much more so than they are pushing the same article under the old label. For the reason, as I think, for the purpose of having their goods appear under one uniform label the world over. As for instance, a man who may demand this
2626 popular cordial in Africa would be able to get the same liqueur as he would receive in New York, or any other country.

x-Q. 43. Were these four cases of Chartreuse under the old label in the last shipment that you had from abroad?

A. I think they were.

x-Q. 44. Is it your understanding that the liqueur contained in those bottles, in those four cases, was prepared at Tarragona?

2627 A. Yes, sir.

RE-DIRECT EXAMINATION:

Re-d. Q. 45. On the bottles of Chartreuse contained in these four cases shipped from Tarragona, was the label identical with Complainants' Exhibit, Chartreuse sold by Batjer & Co.?

Objected to as already answered.

2628 A. The main body of the label was the same, except where the word "France," it was "Tarragona."

Re-d. Q. 46. Omitting the word "France," and substituting the word "Tarragona," are you still in a position to fill orders for Chartreuse bearing this old label?

A. Yes, sir.

BY MR. HOWSON:

Re-x-Q. 47. Yesterday you testified, in answer to x-Q. 16, that some of the bottles sold to Du Vivier and

2629

Bellows were the same as the Exhibit to which your attention has just been called, and you further testified that some did not have the word "France" on, they may have had "Tarragona, Spain." Please explain?

A. If I testified to that yesterday, I must have been mistaken; since then I have looked up the matter, and I find they all had the word "Tarragona" on.

Re-x-Q. 48. Please explain how you looked it up?

A. By talking to our head clerks in the office who had seen, one of the clerks who had seen all the bot- 2630
tles, and various inquiries I had made.

Re-x-Q. 49. In other words, you are testifying to day on hearsay?

A. On very good hearsay, yes.

And thereupon LAWRENCE J. CALLANAN, a witness produced on behalf of complainants, being first duly sworn, deposes as follows:

Q. 1. Please state your name, age, residence and oc- 2631
cupation?

A. Lawrence J. Callanan; age, sixty-nine; residence, New York City; occupation, grocer, dealer in wines and liquors.

Q. 2. Are you a dealer in Chartreuse?

A. Yes.

Q. 3. How long have you been selling this article?

A. About 1897 I think I started in the business and have been selling it since.

Q. 4. Are you aware of the fact that the Monks were 2632
driven out of France, and that their liqueur since that time has been made in Spain?

A. So I am informed.

Q. 5. In your opinion, as a wine merchant, what do you believe to be the general public reputation as to the origin of Chartreuse?

Objected to as incompetent.

A. We always believed that it originated and was put up by the Monks at Chartreuse.

2633

Q. 6. How do you account for the public demand for this liqueur?

A. The confidence that they had in the makers of it.

CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 7. How long have you been selling this Liqueur Peres Chartreux, that is the liqueur under this label Exhibit Complainants' New Label?

2634 A. I don't know how long we have been handling it.

x-Q. 8. When you began to sell this Liqueur Peres Chartreux did you take notice of the warning on the bottom of the label?

A. I believe I did, it was called to my attention by Mr. Nova, I think.

x-Q. 9. And today, if you wanted to be sure that you are getting liqueur made by the Carthusian Monks you would require this label Complainants' New Label, would you?

2635 A. Most decidedly I would. I wouldn't sell any other.

x-Q. 10. I find in the Century Dictionary the following definition or explanation of Chartreuse: "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made." Has that been your understanding of Chartreuse up to the time of the dissolution of the

2636 Congregation of Carthusian Monks?

A. That is my understanding of it. That is, as far as I ever dealt in it.

RE-DIRECT EXAMINATION:

Re-d. Q. 11. Who do you understand are the sole sales agents in the United States for Chartreuse?

A. Batjer & Co. for the Chartreuse made by the Monks.

2637

Re-d. Q. 12. If you should order a case of Chartreuse from Batjer & Co. and they should send you a case of liqueur bearing this old label, bottles like Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co., would you accept it as being the genuine article?

A. This label, and sold by Batjer & Co.? I certainly would.

Re-d. Q. 13. Is it your understanding that this liqueur is called "Chartreuse" because it was made at 2638
La Grande Chartreuse in France, or because it was made by the Carthusian Monks?

Objected to because the label speaks for itself and the question is leading.

A. Because it was made by the Monks.

Signature waived.

2639

And thereupon CHARLES W. OERTEL, a witness produced on behalf of complainants, being duly sworn, deposes as follows:

Q. 1. Please state your name, age, residence and occupation?

A. Charles W. Oertel; age, forty-four; residence, 124 East 55th St., New York City; occupation, buyer for department store of Bloomingdale Brothers.

Q. 2. Do you buy and sell Chartreuse?

2640

A. Yes.

Q. 3. For how many years has Bloomingdale Brothers been handling this liqueur?

A. About thirteen.

Q. 4. And they are handling it at the present time?

A. Yes.

Q. 5. To what do you attribute the popularity of and demand for Chartreuse?

A. To its character as a liqueur, peculiarly its own.

Q. 6. From your experience as a dealer in liqueurs,

2641 what do you believe to be the general public reputation as to the origin of Chartreuse?

Objected to as incompetent.

A. Why, made by the Monks a great many years ago, and through the merits of the article it has gained a wide reputation.

2642 CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 7. I find in the Century Dictionary the following definition or explanation of Chartreuse: "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made." Has that been your understanding of "Chartreuse"?

2643 A. No, because the quotation cited from the dictionary I do not consider strictly authentic, hence my answer, no.

x-Q. 8. In what, if any respects do you find the Century Dictionary definition erroneous or incomplete, in your opinion?

A. Because they have not gone into the details of distillation, and the definition would find way for copious details.

2644 x-Q. 9. So far as the definition in the Century Dictionary does go, however, it is correct, is it not?

A. That I cannot verify.

Q. 10. You have spoken of Chartreuse as having a character as a liqueur peculiarly its own; in a general way, what is it that gives Chartreuse its peculiar character?

Objected to as immaterial.

A. Its exquisite melange of flavors.

x-Q. 11. And that melange of flavors is obtained by

2645

the use of extracts of various aromatic plants, is it not?

A. In my belief, yes.

x-Q. 12. Has it or not been your understanding that the plants used in the manufacture of Chartreuse have been those grown in the region or neighborhood of La Grande Chartreuse in the Alps?

A. I cannot say.

x-Q. 13. About how long have you been handling this Liqueur Peres Chartreux, that is the liqueur un- 2646
der this Complainants' New Label?

A. About the time when it was first brought into this country, but I don't know how long a time that has been without referring to data.

x-Q. 14. Would you say you have been handling this Liqueur under the New Label for more than two years?

A. I did not come prepared to answer such a question and would have to refer to our records.

x-Q. 15. When you began to handle this Liqueur 2647
Peres Chartreux did you pay attention to the notice on the bottom of this new label?

A. No.

x-Q. 16. Have you had occasion to notice it since?

A. No.

x-Q. 17. I will ask you to read it now.

A. I have done so.

x-Q. 18. Referring now to the Exhibit Bottle of Chartreuse sold by Batjer & Co., was the name Batjer & Co. always on the label of the Chartreuse which you 2648
purchased before you began to purchase Liqueur Peres Chartreux?

A. I do not remember.

RE-DIRECT EXAMINATION.

Re-d. Q. 19. In one of your previous answers you said you did not consider the definition in the Century Dictionary as strictly authentic, because the dictionary had not gone into the details of distillation; do you

2649

believe it possible for any dictionary to give the details of distillation of Chartreuse?

A. No.

Re-d. Q. 20. Why not?

A. The formula has always been considered one of secrecy.

Re-d. Q. 21. Who are the general sales agents of Chartreuse in this country?

A. Batjer & Co., to my best belief.

2650 Re-d. Q. 22. And if you should order a case of Chartreuse from Batjer & Co., would you not believe that the goods with which this order was filled was the liqueur made by the Monks, regardless of the label on the bottle?

A. I would believe that the liqueur known as Chartreuse bought through the reputable house of Batjer & Co., would be genuine Chartreuse.

Re-d. Q. 23. You have said that you attribute the exquisite melange of flavors in Chartreuse to the use
2651 of extracts of various aromatic plants; do you attribute these flavors solely to the plants?

A. No.

Objected to as leading.

Re-d. Q. 24. What, in your opinion, is another cause or causes of these flavors?

A. To the scientific process and proportions in which the ingredients are used; and, in my opinion,
2652 chief of which ingredients are made up of various aromatic plants.

Signature waived.

And thereupon JOHN E. DUNWOODY, a witness produced on behalf of complainants, being first duly sworn, deposes as follows:

Q. 1. Please state your name, age, residence and occupation?

A. John E. Dunwoody; age, fifty-four; residence, 527 Throop Ave., Brooklyn, N. Y.; occupation, Presi-

2653

dent and Manager of the Liquor Department of E. C. Hazard & Co.

Q. 2. How many years have you been in the liqueur business?

A. Well, I have been Manager of that department about ten; I have been with the firm twenty-five.

Q. 3. Does your firm handle Chartreuse, and if so for about how many years?

A. Well, they have handled Chartreuse as long as I have been in the business. 2654

Q. 4. To what do you attribute the popularity of and public demand for Chartreuse?

A. Well, I should say because it was a tonic or before dinner drink, and what they term a "digestive" or after dinner drink.

Q. 5. What do you believe to be the source or origin of Chartreuse?

A. Well, the answer to that would be pretty long. I know from reading the history of Chartreuse that it was a liqueur made a great many years ago by the 2655 Monks from their secret formula.

Q. 6. You have spoken of a secret formula. Is it your belief that this liqueur is still made under this old secret formula?

Objected to as leading and immaterial.

A. Well, it is my belief, founded upon what little knowledge I have of it.

Q. 7. What is the standing of Chartreuse as a 2656 liqueur?

A. It is considered a superior liqueur.

Q. 8. What comparison can you make as to the amount of Chartreuse sold, as compared with other liqueurs, such as Benedictine?

A. Well, I couldn't make any statistical comparison.

CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 9. I find in the Century Dictionary the following definition of "Chartreuse": "A highly esteemed

2657

tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made." Has that been your understanding of Chartreuse?

A. Well, that has been my understanding of Chartreuse except that I think it is more of a liqueur than a cordial.

2658 x-Q. 10. How long have you been handling this Liqueur Peres Chartreux, that is, the liqueur under Exhibit Complainants' New Label?

A. Ever since the expulsion of the Monks from France, necessitating the change in label. Ever since this new label came on the market, in place of the old label, we have been handling it, I cannot remember how long it has been.

x-Q. 11. When this new label came out was your attention drawn to this notice at the bottom of it?

2659 A. I think our attention was drawn to that notice through a circular.

RE-DIRECT EXAMINATION.

Re-d. Q. 12. Who do you understand are the sales agents for the United States for Chartreuse?

A. Under present conditions I understand that Batjer & Co. are the sole agents for Chartreuse.

Re-d. Q. 13. If you should order Chartreuse from

2660 Batjer & Co., and received a case of bottles showing this old label, with the name of Batjer & Co. thereon, would you accept the same as being a liqueur manufactured by the Monks?

A. Coming from that source, we would.

Re-d. Q. 14. In the definition given you from the Century Dictionary it is stated that Chartreuse derives its name from the Monastery of La Grande Chartreuse in France. Is that exactly your understanding of the origin of the name of this liqueur?

A. No, ——

2661

Objected to as seeking to get the witness to modify his testimony, and seeking to contradict the terms of the original label itself.

A. From reading I learn that it was first made at or near Chartreuse, and naturally suppose from that fact that it derived its name.

Signature waived.

2662

And thereupon WILLIAM G. MOORE, a witness produced on behalf of complainants, being first duly sworn, deposes as follows:

Q. 1. Please state your name, age, residence and occupation?

A. William G. Moore; age, fifty-four; residence, 348 Central Park West, New York City; occupation, vice-president of H. B. Kirk & Co., wholesale liquor dealers.

Q. 2. Does your company handle Chartreuse? 2663

A. Well, we handle—we have handled both the one made by the Monks in France and also in Spain.

Q. 3. For about how many years has your house handled this liqueur?

A. Well, I have been connected with them since 1897, and we handled it then; and prior to that for twenty-five years I was with the Cook & Bernheimer Co., and they handled it.

Q. 4. To what do you attribute the popularity of Chartreuse as a liqueur? 2664

A. To its peculiar flavor, I suppose.

Q. 5. You would refer to it as being of what grade or rank as a liqueur?

A. First rate, very high class, so considered by the trade.

Q. 6. What do you consider as the origin or source of Chartreuse?

A. Why, the Carthusian Monks, as I understand, first made it, that's the original source.

2665

Q. 7. Have you any information, or any belief, as to how this liqueur came to be called Chartreuse?

A. Only that it was named after the Carthusian Monks, that is my understanding of it, my belief.

CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 8. Referring to your answer to Q. 4, the "peculiar flavor" is given to Chartreuse by the ex-
2666 tracts of the aromatic plants used in its manufacture, is that right?

A. Yes, and in the method of distillation.

x-Q. 9. I find in the Century Dictionary this definition of "Chartreuse": "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made". Has that been your understanding of Chartreuse?

2667 A. No, I wouldn't say so.

x-Q. 10. In what respect, if any, is this Century Dictionary definition incomplete, in your opinion?

A. Well, from the mere fact that it names the Monastery there, a great many things might be made at the Monastery which might not be Chartreuse. The secret of how to make it must be known in order to be successfully made.

x-Q. 11. Then you mean, do you, that to have the definition complete it should have explained how to
2668 make Chartreuse?

A. Not necessarily just that, but the right to make it, as lodged originally with the Monks. I do know that the secret has been very carefully guarded.

x-Q. 12. Do you state that last from personal knowledge, or hearsay?

A. I state it from the knowledge of works on the manufacture of cordials, pretending to give the ingredients and methods of manufacture. They all vary, and the result obtained from following their instructions do not give the Chartreuse flavor.

2669

x-Q. 13. Referring to the original label, you find it stated in French, do you not, that the liqueur is manufactured at La Grande Chartreuse?

A. That's right, yes.

x-Q. 14. And that agrees with the Century definition that the liqueur "derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made"?

2670

Objected to as misleading, the name "Chartreuse" appearing on the old label as well as the place where it is made.

A. No, it does not. It simply states the place where it was manufactured.

x-Q. 15. How long have you been handling this Liqueur Peres Chartreux?

A. Since it first came on the market, about a year and a half ago.

2671

x-Q. 16. I show you Batjer & Co.'s catalog of 1905, in which this liqueur is advertised; have you any reason to doubt that you have been handling it ever since March, 1905?

A. No, I have no reason to doubt that.

x-Q. 17. When this liqueur under the New Label came out, did you note this warning at the bottom of the label?

A. Well, I didn't note it particularly, no.

RE-DIRECT EXAMINATION:

2672

Re-d. Q. 18. Who do you understand are the general sales agents in the United States for Chartreuse?

A. Do you mean Chartreuse or Peres Chartreux?

Re-d. Q. 19. I mean both.

A. Well, I understand that the Chartreuse has been denied importation into the United States. Batjer & Co. are the agents for Liqueur Peres Chartreux.

Re-d. Q. 20. The importation into the United States of Chartreuse was denied to whom?

A. To Cusenier Company.

2673

Re-d. Q. 21. If you should order liqueur from Batjer & Co., and received bottles bearing this old label (Exhibit Bottle Sold by Batjer & Co.) with the name of Batjer & Co. thereon, would you accept it as the genuine liqueur manufactured by the Monks ?

A. Why, yes, certainly.

Signature waived.

2674

And thereupon JOHN A. BADENOCH, a witness produced on behalf of complainants, being first duly sworn, deposes as follows :

Q. 1. Please state your name, age, residence and occupation ?

A. John A. Badenoch ; age, forty-two ; residence, 44 West 44th St., New York City ; occupation, buyer of R. H. Macy's Wine and Liquor and Grocery Department, and buyer of Abraham & Straus' Grocery
2675 Department, President of Cowie & Co. Ltd, 1135 Broadway, importers of wines and liquors and liqueurs.

Q. 2. About how long have you been in the wine and liqueur business ?

A. Since 1880. In this country since 1885.

Q. 3. During this time have you bought and sold Chartreuse ?

A. Not all of this time did I purchase it, all of this time I sold it. I purchased it about 6 years.

2676 Q. 4. What is your understanding as to the origin or source of Chartreuse ?

A. From the Monastery in the Alps Mountains, which I have passed on the route from Lyons and Grenoble.

Q. 5. Who do you understand were the manufacturers of this liqueur ?

A. The Monks at that Monastery, their particular name I forget now.

Q. 6. To what do you attribute the fame of Chartreuse as a liqueur ?

2677

A. To the fact that it was made there by these people, these Monks, who apparently had facilities for either producing or procuring the spirit which they used. Likewise to their ability to put these herbs together to make this liqueur known as Chartreuse.

Q. 7. Have you any information as to whether the Carthusian Monks were driven out of France, and their liqueur subsequently manufactured in Spain?

A. What I have read in newspapers and what I have heard in France, I am not sure whether it was two or 2678 three years ago.

Q. 8. Have you continued to deal in the liqueur made by the Carthusian Monks since it has been manufactured in Spain?

A. Yes.

Q. 9. What do you understand to be the origin of the name "Chartreuse"?

A. A name created by these Monks for the liqueur which they made at this Monastery.

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CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 10. I find the following definition of "Chartreuse" in the Century Dictionary: "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse, in France, where it is made." Has that been your understanding of Chartreuse?

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A. It has, but I should like to add to it that I have always understood that those Monks had a formula or secret which they deemed of great value wherefrom this liqueur was made.

x-Q. 11. You have noticed, I suppose, this warning on the bottom of the label, Complainants' New Label?

A. Yes, I read that the time it came out.

x-Q. 12. To insure your getting genuine liqueur made by the Monks now, would you require this label?

A. As I understand it, yes.

2681

x-Q. 13. Can you say about how long you have been selling this Liqueur Peres Chartreux?

A. I cannot give the exact date from my memory now. It would seem to me to be about two years ago or a year and a half anyway.

RE-DIRECT EXAMINATION:

Re-d. Q. 14. Who do you understand are sales agents
2682 in the United States for the liqueur made by the Monks?

A. Batjer & Co.

Re-d. Q. 15. If you should order a case of liqueur from Batjer & Co. and received bottles like this one (Exhibit Bottle Sold by Batjer & Co.) would you accept it as being the genuine Chartreuse?

A. Not without questioning Batjer & Co. as to the genuineness of the article. I would want this assurance in view of the new label that has come out. I
2683 would accept the goods if Batjer & Co. assured me they were the genuine product of the Monks.

Signature waived.

And thereupon SIDNEY S. DARLING, a witness produced on behalf of complainants, being first duly sworn, deposes and says:

Q. 1. Please state your name, age, residence and
2684 occupation?

A. Sidney S. Darling; age, fifty-eight; residence, Towners, New York; occupation, wine merchant.

Q. 2. With whom are you associated in the wine business?

A. Smith & Darling; I am the buyer for that firm.

Q. 3. Does your firm deal in Chartreuse?

A. Yes.

Q. 4. For about how many years have you handled this article?

A. A good many years. More than twenty, I guess.

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Q. 5. To what do you attribute the popularity of and demand for this liqueur ?

A. Well, Chartreuse, as it is known, was made by the Monks and there was only one Chartreuse up to a couple of years ago, as far as I know—that is, genuine Chartreuse.

Q. 6. What do you consider the origin or source of the liqueur you have referred to as " genuine Chartreuse " ?

A. As I said, it was made by the Monks, in France, 2686
and was made for a great number of years—hundreds of years.

Q. 7. In what grade, or class of liqueurs would you put Chartreuse ?

A. I have always understood it to be the very highest grade, the very best that is made.

Q. 8. In your opinion, what is the origin of the name " Chartreuse " as applied to this liqueur made by the Carthusian Monks ?

A. Now you ask me a little too much, I suppose it 2687
is a name they adopted years ago.

Q. 9. You said that up to a couple of years ago, so far as you know, there was only one genuine Chartreuse. Do you mean to imply, by that answer, that there is now more than one genuine Chartreuse ?

A. No, I do not.

Q. 10. What was the other liqueur you referred to ?

A. I referred to that put up by the French Government, I suppose, or Cusenier, I don't know which, and introduced into this country by Cusenier, so far 2688
as I know.

Q. 11 Are you aware of the fact that the Monks were driven out of France, and that they then started their factory in Spain for the manufacture of Chartreuse ?

A. Well, I believe so, from all I have read and understood. I know it is coming from Spain now, the Chartreuse we used to get from France.

Q. 12. And you consider the Chartreuse which is now coming from Spain to be the genuine article ?

2689

A. I most certainly do,—that which is coming from Spain put up by the Monks.

CROSS-EXAMINATION BY MR. HOWSON:

x-Q. 13. When you speak of the liqueur made by the Monks in France and Spain you mean that sold here under this label, Complainants' New Label?

A. Yes, that's the label.

2690 x-Q. 14. How long have you been selling this Liqueur Peres Chartreux?

A. I think somewhere in the neighborhood of two years, I don't remember exactly.

x-Q. 15. When you began selling this Liqueur Peres Chartreux was your attention drawn to the warning at the bottom of the label?

A. I don't know whether I was warned or not, but I knew of that.

x-Q. 15. And to-day, to be sure that you would get
2691 liqueur made by the Monks, you would require this label, would you?

A. Well, that is the only label that I know they issue, and of course we would expect to get that label on it; we don't buy goods on the label.

x-Q. 16. In the Centnry Dictionary I find this explanation of "Chartreuse": "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La
2692 Grande Chartreuse, in France, where it is made." Has that been your understanding of Chartreuse?

A. Well, there is where it was made formerly. It is not necessary to make it there forever, it can be made any where else just as well if they have the recipe and know how to make it.

RE-DIRECT EXAMINATION:

Re-d. Q. 17. You have just spoken of a recipe for making Chartreuse; do you understand that this re-

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cipe is generally known or in fact known by others than the Monks themselves?

A. Well, I haven't any idea that anyone else knows anything about it but the Monks; I guess they have been offered a good deal of money for the recipe.

Re-d. Q. 18. Who are the sales agents in the United States for Chartreuse?

A. This, you mean, (pointing to bottle of Liqueur Peres Chartreux)?

Re-d. Q. 19. I mean the liqueur manufactured by the 2694
Monks.

A. Messrs. Batjer & Co.

Re-d. Q. 20. If you should order from Messrs. Batjer & Co. a case of liqueur manufactured by the Monks, and this order should be filled by sending you bottles similar to this one (Chartreuse sold by Batjer & Co.) would you accept it as being the genuine liqueur?

A. Not at the present time, I wouldn't. I want to correct myself, this is a very old bottle, and I suppose that was the goods sold by Batjer before the 2695
Monks were driven out.

Re-d. Q. 21. Therefore, woul dyou or would you not accept it?

A. No, I would not.

Signature waived.

Counsel for complainants gives notice that for the convenience of the Court at final hearing, he will produce any or all of the following, as he may see fit, viz.: the first opinion of Judge LACOMBE herein, the injunction order issued in accordance therewith, the opinion of the Court of Appeals, the dissenting opinion of Judge TOWNSEND, and the injunction *nisi*. 2696

Counsel for defendant calls for the production of the witness Haan for further cross-examination at an early convenient date, because of facts which have been brought to the attention of counsel for defendant since the cross-examination yesterday.

Adjourned subject to agreement.

2705

A. Batjer & Co. became a subscriber about May 1st, 1905.

Q. 7. Is Batjer & Co. still numbered among your subscribers?

A. Yes, they are.

Q. 8. Can you produce the original agreement with Batjer & Co. of about May 1, 1905?

A. I can and do, here it is.

2706 Counsel for complainants requests the Examiner to mark this agreement for identification in this case as "Complainants' Exhibit, Batjer & Co. Trade-Mark Co. Agreement." It is stipulated between counsel that a copy of this agreement may be used in evidence with the same force and effect as the original, subject to correction by the original.

Q. 9. I will ask you to read into the record the
2707 second paragraph of this agreement?

A. "In consideration of this subscription the Trade Mark Protective Company hereby agrees for the period of one year from May 1, 1905, to May 1, 1906, to use its best efforts to detect counterfeits and close imitations of the trade marks of J. B. Lysholm, Throndhjem, Norway, Aquavit No. 1, Linie Aquavit, and Liqueur Peres Chartreux and La Grande Chartreuse, and John Ramsay Scotch Whiskey, and during said time to the best of its ability prosecute all such
2708 cases civilly or criminally."

Q. 10. After the expiration of this agreement on May 1, 1906, did Batjer & Co. enter into a second agreement with the Trade Mark Company; and, if so, about when?

A. Batjer & Co. entered into a second agreement on about July 1st, 1906.

Q. Can you produce the original of this second agreement?

A. I can and do.

2709

It is stipulated between counsel that this second agreement is worded identically the same as the first agreement above referred to, except that it is dated July 1, 1906, and expires on July 1, 1907.

Q. 12. Can you produce any samples of the labels which you undertook to protect by these agreements with Batjer & Co.?

A. I can and do produce four different labels. 2710

Q. 13. Where did these four labels come from; that is, who gave them into your possession and about when?

A. These labels were given to the Trade Mark Protective Company by Messrs. Batjer & Co. on about May 1, 1905, when the original arrangement was made. I obtained them from the files of the Trade Mark Protective Company.

Q. 14. Did the Trade Mark Company ever find any persons or concerns who were infringing on the rights 2711 of the owners of these labels?

A. Yes.

The four labels produced by the witness are offered in evidence by counsel for complainants as "Complainants' Exhibit, Labels Given to Trade Mark Co."

Q. 15. Were actions brought against these infringers; if not, what was done with regard to them? 2712

A. No actions were actually brought. Most of the infringers were smaller dealers, and they were notified and promised to cease infringing. In the case of Lange Brothers, a co-partnership composed of Herman C. Lange and Carl O. Lange and engaged in business at 442 West 14th Street, an agreement was obtained from the Langes, in lieu of an injunction, which provided that the Langes should discontinue selling articles with imitation labels, and provided a sum as liquidated damages to insure per-

2721

known as Liqueur Garnier, which is put up in bottles and with labels which generally resemble those used for Chartreuse. The detectives for the Trade Mark Protective Company made some investigation in regard to this, and reported that this article was substituted by dealers, and sold for Chartreuse. This infringement has been referred to the attorneys for the complainants in this case and has never come to me for action in my capacity as attorney for the Trade Mark Company.

2722 Q. 23. What was done with regard to the alleged infringement in Staten Island?

A. I really don't know, I don't know what has been done about that, it is quite a recent matter. The investigation has not been completed by the detectives. After it is completed it will be referred to me for legal action.

Q. 24. What would the Trade Mark Company do to-day if its detectives should find persons or concerns who are refilling old Chartreuse bottles, or bottles bearing
2723 labels similar or identical to the labels annexed to the two agreements produced by you?

A. It would report the evidence to me or to my office for action of some kind, depending upon the character of the evidence, and the importance of the individual or firm.

Counsel for defendant makes a general objection to the foregoing deposition and the profer of exhibits, as irrelevant and immaterial
2724 to the question in controversy in this case.

CROSS-EXAMINATION DE BENE ESSE:

x-Q. 25. The four labels produced by you and marked "Complainants' Exhibit, Labels Given To Trade Mark Company" include three Chartreuse labels and one of Liqueur Peres Chartreux. I will ask you to produce, to be offered in evidence, samples of the other trade marks mentioned in the Batjer & Co.-Trade Mark Company Agreements, namely, J. B. Lys-

2725

holm, Throndhjem, Norway, Aquavit No. 1 and Linie Aquavit and John Ramsay Scotch Whiskey?

The question is objected to, being wholly immaterial to this case.

A. I cannot produce them at this moment, but will obtain them from the Trade Mark Company's files.

It is agreed that when the witness supplies these samples they may be marked in this case as the labels of their respective names. 2726

Cross-examination closed, signature waived.

COMPLAINANTS REST.

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TRADE-MARK.

F. M. M. GREZIER.

LIQUEUR OR CORDIAL.

No. 3,377. **Registered Jan. 25, 1876.**



A



A

B 



B

Witnesses:

Chas. R. Gill

E. E. Chaffee

Frere Marcel Marie Grezier

By his attys

Cox and Cox

UNITED STATES PATENT OFFICE.

FRÈRE MARCEL MARIE GRÉZIER, PROCUREUR OF CONVENT OF THE GRANDE CHARTREUSE, FRANCE.

TRADE-MARK FOR LIQUEUR OR CORDIAL.

Statement of Trade-Mark No. **3,377**, registered January 25, 1878; application filed January 19, 1876.

Specification describing a Trade-Mark, used by Frère MARCEL MARIE GRÉZIER, Procureur of the Convent of the Grande Chartreuse, in the Department of Isére, in the République of France, for Liqueur or Cordial.

The trade-mark that is the subject of the application in connection with which this specification or statement is made consists of the word "Chartreuse," accompanied by a fac-simile of the signature of L. Garnier, a former procureur of the said order at said convent.

The accompanying labels show the manner in which the said trade-mark is now, and has for nearly or about six years last past been, applied.

In the label marked "A" the application is and has been made, as aforesaid, as follows: In the upper corner fields of an ornamental parallelogram have been placed the words and letters "Liqueur Fabriquée A La Gde. Chartreuse," with two fac-similes of the signature of L. Garnier, aforesaid, below, the central field being blank. The elements thus arranged have been printed or impressed upon paper, having a representation in water-marks of a globe surmounted by a cross and seven stars, with the name "L. Garnier" below, the elements of the label being so disposed that the said representation in water-marks occupies the central field of the parallelogram, and is conspicuously apparent when the light is favorable. This label, which has been either yellow or green, has been attached to the side of the bottle containing the manufactured goods in a usual manner, and is now so employed.

In the label marked "B" the application is and has been made, as aforesaid, as follows: Within a circle, and in line therewith, have been placed the words "Grande Chartreuse," with the fac-simile of the autograph of L. Garnier, aforesaid, in the lower field of the circle, the whole printed or impressed upon a circular piece of paper, having a globe surmounted by a cross in water-marks. The water-marks are not, however, readily observed, by reason manner the said label "B," which, like the label "A," has been either yellow, or green, or white, has been, as aforesaid, and is now employed.

While the said labels show the manner in which the said trade-mark has been, as aforesaid, and is now used, the parallelogram, water-marks, circle, words, and any and every other feature or element, saving and excepting the word "Chartreuse," accompanied by the fac-simile of the signature of L. Garnier, afore said, may be omitted or varied, in whole or in part, without affecting the trade-mark, which consists, as hereinbefore recited, of the single word "Chartreuse," accompanied by the single fac simile of the autograph of L. Garnier, aforesaid, without relation to any of the other parts, features, or elements described and shown.

Prior to the applications of said trade-mark, as hereinbefore set forth, it was used as follows: The words "Liqueur Fabriquée A La Gde. Chartreuse" were printed or impressed, within an ornamental parallelogram, in two horizontal lines, with the fac-simile of the signature of L. Garnier, aforesaid, below, the whole applied in a label, that was attached to the side of the bottle. It was also used upon a round cork-label, which was relatively similar to the label "B," except that it embraced certain words and characters not shown in said label "B," and was otherwise unlike it in certain immaterial respects, which need not be recited with greater particularity herein.

The said trade-mark has been used by the said procureur and his predecessors for a period of not less than thirty years last past.

The class of merchandise and particular description of goods by which the said trade-mark has been appropriated, and upon and in connection with which it has been used, is liqueur or cordial made according to a formula which is known only to some of the members of said convent.

The mode in which the said trade-mark has been applied and used is hereinbefore fully

be protected by the present application are, both separately and when combined, the property of the said procureur as the representative of said convent, and are hereby distinctly and expressly so declared to be, the same having been distinguished and described only to the end that the particular trade-mark sought to be protected by the present application may be definitively understood, and the mode which it is now and has been used clea pointed out.

FRÈ. MARCEL MIE. GRÉZIER,
Procureur de la Grande Chartreu

Witnesses:

Le Baron LOUIS ERNEST DE NICOLA

A. NICOLAY.

Complainants' Exhibit

REGISTERED TRADE MARK No. 10,897

TRADE-MARK.

FRÈRE MARCEL MARIE GRÉZIER.

(No. 3,377. Registered January 25, 1876.)

A LIQUEUR OR CORDIAL.

No. 10,897. Registered Jan. 29, 1884.

A.





B.



Witness

A. Bourgeois

Fre Marcel Marie Gre

UNITED STATES PATENT OFFICE.

FRÈRE MARCEL MARIE GRÉZIER, OF GRANDE CHARTREUSE, FRANCE.

TRADE-MARK FOR LIQUEUR OR CORDIAL.

STATEMENT and DECLARATION of Trade-Mark No. 10,897, registered January 29, 1884.

Application filed January 2, 1884.

STATEMENT.

To all whom it may concern:

Be it known that I, FRÈRE MARCEL MARIE GRÉZIER, Procureur of the Convent of the Grande-Chartreuse, in the Department of Isère, France, have adopted for my use a Trade-Mark for Liqueur or Cordial, of which the following is a full, clear, and exact specification.

My trade-mark consists of the word "Chartreuse," accompanied by a fac-simile of the signature of L. Garnier, a former procureur of said order at the same convent. These have generally been arranged as shown in the accompanying fac-similes, and consist of the representation of labels of rectangular form, bordered by an ornamental bead-work, in the upper corners of which are placed the words "Liqueur Fabriquée a la Gde. Chartreuse," and below two fac-similes of the signature of L. Garnier, the central field of labels being blank. Those elements are printed upon papers that may be either yellow or green, and have all a representation of water-marks, being a globe surmounted by a cross and seven stars, with the name "L. Garnier" below. This water-mark appears at the center of the labels, and is conspicuously apparent when the light is favorable. The other labels shown in the fac-simile are described as follows: Within a circle, and parallel therewith, are printed the words "Grande Chartreuse," with the fac-simile of the autograph of L. Garnier in the lower field of the circle, the whole being impressed upon circular pieces of paper having a globe surmounted by a cross in water-marks; but all the devices, circle, words, &c., aforesaid may be omitted or varied at pleasure without materially altering the character of my trade-mark, the essential feature of which consists of the single word "CHARTREUSE," accompanied by the fac-simile signature of L. Garnier.

The said trade-mark has been used continuously by me and my predecessors, the former procureurs of said convent, for a period of more than thirty-seven years last past.

The class of merchandise to which this trade-mark is appropriated is cordials, and the particular description of goods comprised in such class on which I use the said trade-mark is a liquor called "Chartreuse," the formula of which is known only to some of the members of said convent.

It has been my practice to use such trade-mark by applying it as follows to the bottles containing the goods of my fabrication, viz: label A by pasting it to the body of bottles, and label B by pasting it to the cork of said bottles.

FRE. MARCEL MARIE GRÉZIER.

Witnesses:
A. BOURGEAT,
T. A. CONSTANTIN.

DECLARATION.

FRÈRE MARCEL MARIE GRÉZIER, Procureur of the Convent of the Gde. Chartreuse, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in such near resemblance thereto as may be calculated to deceive; that the trade-mark has been used with no alteration in the essential features thereof as now presented for registration; that the said trade-mark has been used in connection with goods manufactured at the Convent of the Grande-Chartreuse, in the Department of Isère, France, and has been continuously used by me and my predecessors, the former procureurs of said convent, for a period of more than thirty-seven years last past; that the said trade-mark has been used in connection with goods of the class enumerated in the foregoing statement, viz: cordials, and particularly with the liquor called "Chartreuse," manufactured by the monks of said convent; that the said trade-mark has been used in connection with foreign nations, and particularly between France and the United States of America, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the French Republic.

FRE. MARCEL MARIE GRÉZIER.

FRÈRE MARCEL MARIE GREZIER, PROCUREUR OF THE CONVENT OF THE GRANDE CHARTREUSE.

LIQUEMOR CORDIAL.

No. 3,989. Registered Sept. 12, 1876.

LIQUEUR FABRIQUÉE A LA Gde CHARTREUSE.

J. Garnier A

LIQUEUR A LA Gde FABRIQUÉE CHARTREUSE

J. Garnier B J. Garnier

GRANDE CHARTREUSE D

I

Gde CHARTREUSE



By his attys

UNITED STATES PATENT OFFICE.

FRÈRE MARCEL MARIE GRÉZIER, OF ISÉRE, FRANCE, PROCUREUR OF THE CONVENT OF THE GRANDE CHARTREUSE.

TRADE-MARK FOR LIQUEUR OR CORDIAL.

Statement of Trade-Mark No. 3,989, registered September 12, 1876; application filed September 1, 1876.

Specification describing a Trade-Mark, used by Frère MARCEL MARIE GRÉZIER, Procureur of the Convent of the Grande Chartreuse, in the Department of Isére, and Republic of France, for Liqueur or Cordial.

The trade-mark that is the subject of the application in connection with which this specification or statement is made consists of the word-symbol "CHARTREUSE."

The said trade-mark—to wit, the word-symbol "Chartreuse,"—has been applied and used in numerous ways. It has been printed or impressed upon labels, which have been attached to the bottles containing the manufactured goods; cast or blown in the bottles in which the cordial or liqueur has been put upon the market; marked upon the cases or boxes in which the bottles containing the cordial or liqueur have been packed for shipment or otherwise; and used and applied in circulars, advertisements, and publications of sundry descriptions.

The accompanying labels, marked, respectively, A, B, C, and D, show the manner in which it has been applied and used, when printed or impressed upon labels. These labels have been yellow, white, or green, according to the strength or potency of the liqueur, the labels A and B being used upon the side of the bottles, and the labels C and D, as cork labels, upon the top or corks thereof. When blown or cast in the bottles, the said trade-mark has been blown or cast in a usual manner, most frequently near the top of the body of the bottle, adjacent to the base of the neck, and in combination with the word "Gde." and the stars and globe surmounted by a cross, as shown in the cuts marked E. When marked upon the cases or boxes it has been in ordinary Roman characters, and the use and application in circulars, advertisements, and other publications, have been in the form and manner common with manufacturers of cordials and analogous goods.

While the said trade-mark—to wit, the word-symbol "Chartreuse"—has been used, as hereinbefore set forth, in connection with divers incidental features and elements, the said incidental features and elements are not in any wise a part of the trade-mark sought to be protected by the application in connection with which this specification or statement is made, the trade-mark consisting, as hereinbefore recited, of the word-symbol "Chartreuse," irrespective of any, every, and all of the features and elements that have been used in connection or combination with it.

The class of merchandise and particular description of goods by which the said trade-mark has been appropriated, and upon and in connection with which it has been used, is liqueur or cordial.

The mode in which the said trade-mark has been used and applied is hereinbefore fully set forth.

The divers features, elements, and parts hereinbefore mentioned and described as being independent of the trade-mark sought to be protected by the present application, are both separately and when combined the property of the said procureur, as the representative of said convent, and are hereby distinctly and expressly so declared to be, the same having been distinguished and described only to the end that the particular trade-mark sought to be protected by the present application may be definitely understood, and the mode in which it is now and has been used clearly pointed out.

MARCEL MARIE GRÉZIER,
Procureur de la Grande Chartreuse.

Witnesses:
W. P. WAGONER, Jr.,
L. MATHURIN L'HUISIER.

TRADE-MARK.

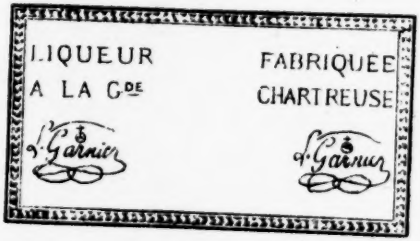
FRÈRE MARCEL MARIE GRÉZIER.

(No. 3,989. Registered September 12, 1876.)

A LIQUEUR OR CORDIAL.

No. 10,898. Registered Jan. 29, 1884.

A.



B.



C.



D





Witnesses:
A. Bourgeat

UNITED STATES PATENT OFFICE.

FRÈRE MARCEL MARIE GRÉZIER, OF GRANDE CHARTREUSE, FRANCE.

TRADE-MARK FOR A LIQUEUR OR CORDIAL.

STATEMENT and DECLARATION of Trade-Mark No. 10,808, registered January 29, 1884.

Application filed January 2, 1884.

STATEMENT.

To all whom it may concern:

Be it known that I, FRÈRE MARCEL MARIE GRÉZIER, Procureur of the Convent of the Grand Chartreuse, in the Department of Isère, France, have adopted for my use a Trade-Mark for Liqueur or Cordial, of which the following is a full, clear, and exact specification.

My trade-mark consists of the word-symbol "Chartreuse." It has generally been arranged as shown in the accompanying fac-similes—viz., on labels of rectangular form, with a thick fancy border, containing several words and letters, among which is the word "Chartreuse." The other labels show the same word arranged in a circular way upon a round label. These last labels, which are used in several colors, varying according to the quality of my product, are to be pasted upon the cork of bottles containing the products; and the first-named labels hereinbefore described are to be applied to the body of the same bottles. The trade-mark is also blown or cast in the bottles in a usual manner, in combination with the word "Gde., seven stars" and a globe surmounted by a cross, as shown in the third label; but all these incidental features and elements may be omitted or varied at pleasure without materially altering the character of my trade-mark, the essential feature of which is the word-symbol "CHARTREUSE."

This trade-mark has been used continuously by me and my predecessors in said convent for a period of more than thirty-seven years.

The class of merchandise to which this trade-mark is appropriated is cordials, and the particular description of goods comprised in such class on which I use the said trade-mark is a liqueur called "Chartreuse," the formula of which is known only to some of the members of said convent.

It has been my practice to use such trade-mark by applying it, as hereinbefore explained, as label upon the bottles or corks employed with my products, or by casting it on same bottles, or by printing it upon boxes and vessels of every kind containing the same.

FRE. MARCEL MARIE GRÉZIER.

Witnesses:

A. BOURGEAT,

T. A. CONSTANTIN

DECLARATION.

FRÈRE MARCEL MARIE GRÉZIER, Procureur of the Convent of the Gde. Chartreuse, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by him in commerce with foreign nations, and particularly between France and the United States of America, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the French Republic.

FRE. MARCEL MARIE GRÉZIER.

Sworn and subscribed before me, at Lyons, France, this thirteenth day of December, eighteen hundred and eighty-three.

[L. S.] BENJAMIN F. PEIXOTTO,

Consul of the United States at Lyons.

2729

Complainants' Exhibit, Koenig Letter.

(Letterhead of Jules C. Koenig)

NEW ORLEANS, LA., Oct. 31, 1904.

MESSRS. BATJER & COMPANY,
45 Broadway,
New York City, N. Y.

GENTLEMEN: On the 14th inst. I gave your salesman 2730
an order for 25 cases assorted Chartreuse, and since then I am in receipt of a circular from the Cusenier Company advising me that they are the distributing agents for the Grande Chartreuse Liqueur, and that nothing has been changed in the putting up of the products of the Grande Chartreuse, which bear the same labels as heretofore. Under these circumstances I will not be able to handle your Chartreuse, and request you to cancel my order for the 25 cases.

Yours truly, 2731
(Signed) JULES C. KOENIG,
p. H.

Complainants' Exhibit, C. Jevne Co. Letter.

(Letterhead of C. Jevne Co.)

CHICAGO, Oct. 26, 1904.

HERMAN BATJER & CO.,
45 Broadway, New York. 2732

GENTLEMEN: Please find enclosed circular, received this morning. We are, in this circular, threatened by suits for Infringement in selling Chartreuse, and under the circumstances, we beg to ask that you do not ship us any Chartreuse until it has been determined whether we can sell same or not.

Please cancel our order for the present and much oblige

Respectfully yours,
(Signed) C. JEVNE CO.

Enc.

2733

Complainants' Exhibit, Batjer & Co.—Trade Mark Co. Agreement.

BATJER & COMPANY,
45 Broadway.
Address for Telegrams :
Batjer—New York.
2734 A.B.C. Code used.

NEW YORK, May 1st, 1905.

Messrs. Batjer & Co., hereby subscribe to the Trade Mark Protective Company the sum of $500, one-half to be paid upon signing of this agreement, and the balance of $250 to be paid November 1st, 1905.

In consideration of this subscription the Trade Mark Protective Company hereby agrees for the period of one year from May 1, 1905, to May 1, 1906, to use its best
2735 efforts to detect counterfeits and close imitations of the trade marks of J. B. Lysholm, Throndhjem, Norway, Aquavit No. 1 and Linie Aquavit, and Liqueur Peres Chartreux and La Grande Chartreuse, and John Ramsay Scotch Whiskey, and during said time to the best of its ability prosecute all such cases civilly or criminally.

In the event of a recovery of damages in civil cases, one-third of the gross amount (exclusive of actual taxable costs and disbursements) recovered is to be paid
2736 to Messrs. Batjer & Co.

It is further expressly agreed that all criminal proceedings are to be instituted by said Trade Mark Protective Company, its servants and agents, without any action on the part of Messrs. Batjer & Co., or the owners of any brands or trade marks dealt in by said firm and at the sole risk of the said Trade Mark Protective Company.

It is understood however that no proceedings shall be instituted by the Trade Mark Protective Company,

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without first advising Batjer & Co. of the name of the house against whom it is proposed to take action.

TRADE MARK PROTECTIVE COMPANY,
By WILLIAM F. STRAUSS,
General Manager.

(Seal of Trade Mark Protective Company)

BATJER & Co.

2738

Complainants' Exhibit S, Judgment of the Court of Grenoble of May 18, 1905.

EXTRACTS FROM THE MINUTES OF THE CLERK OF THE CIVIL TRIBUNAL OF THE FIRST INSTANCE OF THE DISTRICT OF GRENOBLE, ISERE.

The first chamber of the Civil Tribunal of the First Instance of the District of Grenoble, Isere, delivered in its public audience held May eighteenth, nineteen 2739 hundred and five, the decision, the tenor of which follows:

Between: The Union Agricola, a stock company, whose place of business is at No. 13 rue Aucha, Barcelona, in the proceedings instituted by Mr. Alphonse Daumas de Foxa, lawyer at Barcelona, having Maitre Novel as attorney;

And: Mr. Henry Lecouturier, judicial administrator at Paris, acting as administrator—sequestrator and receiver of the properties of the Congregation of the 2740 Chartreux, having Maitre Guignier as attorney;

And further: Messrs. Brezun & Co., merchants, at Marseille, having Maitre Jobert as attorney;

Mr. Durand, merchant at Marseille;—the Eden-Bars Company, having Maitre Esprit as attorney;

Messrs. Durande & Arras, merchants at Cerbere, having Maitre Novel as attorney.

WHEREAS by instrument received M. Sourd, Notary at Saint-Pierre-de-Chartreuse, May 20, 1897, Gabriel-

2741 Alfred Grezier, Procureur of the Convent of the Grande-Chartreuse, assigned to Marius Celestin Rey, the business of manufacturing of cordials, elixirs and other products carried on at the Grand-Chartreuse and at Fourvoirie, under the commercial name "cordial made at the Grande Chartreuse, vegetable elixir of the Grande-Chartreuse or products of the Grande-Chartreuse," the said holdings consisting in: 1. the custom and good-will attached thereto; 2. the ownership of
2742 the trade-marks and commercial names serving to distinguish these products, as well as the pattern of the bottles, flasks, boxes and cases used to contain them; 3. the exclusive right to the industrial and commercial use of the name of Garnier; 4. the rights resulting from all assignment, authorization and transmissions agreed to by the said L. Garnier to Grezier, according to instrument received by the same Notary, on Dec. 9, 1871; 5. the right to call himself the sole successor of Grezier and consequently of Louis Garnier; 6. the in-
2743 dustrial property in all its forms, such as possessed by the assignor and enjoyed publicly and without trouble, together with the benefits of the decisions and judgments which have perpetuated the same; 7. the movable property and the utensils used in the exploitation; 8. finally the merchandise, raw materials, manufactured products and accessories of all sort which are in the stores and cellars of the Grande-Chartreuse and of Fourvoirie; that since this date the Abbe Rey, who was the procureur of the Grande-Chartreuse, has sold
2744 to the public the products or cordials of the Grande-Chartreuse, made at Fourvoirie, according to the processes of the Chartreux Fathers;

WHEREAS, in accordance with the law of July 1, 1901, which pronounced the dissolution of the unauthorized Congregations and granted to them a period of three months within which to obtain an authorization, the Congregation of the Chartreux made application for authorization, which was rejected by the Chamber of Deputies at the session of March 28, 1903, and Lecouturier was named administrator-se-

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guestrator and receiver of the properties of the said Congregation, by decision of the Tribunal here, under date of March 31st, the same month;

WHEREAS in the suit begun by the receiver against Abbe Rey, proprietor of the marks of the Grande-Chartreuse to have the latter declared as the representative of the Congregation of the Chartreux, the Tribunal rendered on April 23, 1904 a decision by which it held that the business of maker of cordials, elixirs and other products carried on as well at the 2746
Grande-Chartreuse as at Fourvoirie, under the commercial name of "cordial made at the Grande-Chartreuse," vegetable elixir of the Grande-Chartreuse, products of the Grande-Chartreuse, comprising the custom, the good-will, the ownership of the trade-marks and commercial names serving to distinguish these products, as well as the pattern of the bottles, flasks, boxes and cases serving to contain the same, the exclusive right to the industrial and commercial use of the name L. Garnier, the movable property, 2747
the utensils of all kinds used in the exploitation, the merchandise, raw materials, manufactured products located in the store-houses, cellars and in bond, as well as all appurtenances and any dependencies in general of the said holding, object of the sale of the 20th of November, 1897, are in reality the property of the Congregation of the Chartreux, that instrument being void as passed to Rey, a member of the Congregation, whom the receiver has established by serious, precise and concordant presumptions to be the representative 2748
of the Chartreux—consequently, the said business with all its accessories, comprising the trade-mark, is property held by the Congregation under the terms of Articles 18 and 13 of the law of July 1, 1901, and forms part of the assets to be liquidated;

WHEREAS by order of May 17, 1904, rendered in urgency, Lecouturier was authorized by provisional and urgent measure, without prejudice to his capacity as administrator-sequestrator of the Congregation of the Chartreux, to take effective possession, by virtue of Ar-

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ticle 18 of the law aforesaid, of the plant of Fourvoirie, as well as of the business there carried on with its dependencies, and that following this order, the receiver secured possession of the said establishment which Abbe Rey was forced to leave, in May, 1904;

Whereas the decision of April 23, 1904, and the order of May 17th following have been appealed from by Abbe Rey, and as the suits connected with these appeals are yet pending before the Court;

2750 Whereas the Chartreux, expelled from the Convent of the Grande-Chartreuse on April 20, 1903, have taken refuge, some at Pignerol and others at Tarragone; and there was entered into on February 6, 1904, between the R. F. Baglin, in religion Dom Michel, Superior General of the Chartreux, acting as well in this capacity as the verbal proxy of each of the members who form part of this order, and the Union Agricola, a Spanish stock company at Tiana, province of Barcelona, incorporated Dec. 27, 1901, represented by

2751 Mr. Daumas de Foxa, its director-general, an agreement in which the following stipulations were embodied:

1. Baglin in his capacity as Superior General of the Chartreux grants to the Union Agricola the exclusive commercial exploitation of the industrial products which have served in the manufacture of the cordials, elixirs and products of the Grande-Chartreuse; 2. the manufacture will be for the account and at the risk of the Union Agricola, in the establishment of said Com-

2752 pany at Tarragone; 3. the processes employed constituting secrets of manufacture, the Union Agricola agrees to employ only workmen furnished by the General of the Chartreux, who will be placed under the orders of one or more Fathers chosen by the Father General, from the Order of the Chartreux; 4. Baglin or his representatives will deliver to the Union Agricola, in the establishment itself, the products manufactured by them, at a price determined by the contract; 5. the present agreement is made for twelve years, from February 1st, 1904, renewable by tacit reconduction.

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WHEREAS, in order to exploit the monopoly which was thus conceded to it, the Union Agricola filed in Spain, in France, and in foreign lands, a trade-mark which carries the following statement: "Cordial manufactured at Tarragone by the Chartreux Fathers", according to regular certificates of filing delivered in Spain in April and June, 1904;

WHEREAS on July 2, 1904, Lecouturier presented to the President of the Civil Tribunal of Marseille a request for an authorization to seize the cases of cordials 2754
bearing the said mark and this by virtue of article 1 of the law of July 28, 1824, and of article 17 of the law of June 23, 1857; that following the issuance of an order in conformity with this request, ten cases were seized in the hands of Durand, merchant at Marseille, who was the addressee; that an identical request was presented to the President of the Civil Tribunal of Valence, July 7th, and a seizure made at the establishment of Audier Bros., of that city, according to official report of the following day, July 8th, of ten cases ad- 2755
dressed to Victor Audier; that on the same day, July 8th, Michel Cros, lawyer at Perpignan, acting as proxy of Lecouturier, presented to the Judge of Peace of Argeles, a request for authorization to describe and seize everywhere where need be, the products bearing the label: "Cordial manufactured by the Chartreux Fathers"; especially to enjoin the Railroad Co. of the South, at the station of Cerbere, from delivering this merchandise to any addressee, to the customs agent or to any other holder; an order in 2756
conformity with this was rendered and on the same day, July 8th, Lecouturier seized at Cerbere 410 cases of cordials, which had arrived on July 5th addressed to Arras, agent, the court constituting as trustee-sequestator of the seizure Mr. Vincent Orpy, who was notified in his said capacity, by copy of the request for the order and of the official report of the seizure; that following writ of the same day, Lecouturier served on the Railroad Co. of the South, an injunction, until otherwise ordered by Court, against holding any mer-

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or holders, as to the validity of the seizures practiced by him and to the suit directed by the Union Agricola against Lecouturier looking to the invalidation of the seizures made against Arras, Durand and Audier; as the solution of these five suits, both of the principal conclusions and of the cross conclusions which have been made, is subordinate to the examination of the trade-mark of the Union Agricola, in order to find whether or not this mark consti-
2766 tutes a counterfeit, a fraudulent imitation of the mark of the Grande-Chartreuse which the judgment of April 23, 1904, has declared to form a part of the mass that Lecouturier is charged to liquidate; as these suits are connected, and present the same question to be adjudicated and as in the interest of the parties in the matter in order to economize the charges, it is expedient to pronounce a junction, which the Tribunal has the right to do, when the suits before it tend to the same end and present, even between different parties, the
2767 same litigation to solve;

WHEREAS the defendants raise against the procedure directed against them by the receiver several pleas of flaw in the form, which it is necessary to examine first;

WHEREAS though the orders given to authorize the seizures are general and do not specify either the places where they are to be practiced, nor the persons in whose hands the incriminating products are to be found, there exists no text which requires, on pain of
2768 invalidity, the specialization which the defendants contend is necessary; that the nullities depend on a strict interpretation of the law and cannot be pronounced in the absence of a text of law which imposes them; that the orders delivered by the magistrates who have authorized the seizures are therefore regular; but however broad may be the powers that the law of June 23, 1857, gives to the magistrates to determine counterfeit, Lecouturier could not serve on the Company of the South an injunction for the stoppel of all the merchandise which the Union Agricola might

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forward, and thus hinder the commerce of this Company, which neither the law of June 23, 1857, nor the principles of common equity authorized;

WHEREAS the requests looking to the seizure at Cerbere were presented to the Judge of Peace of Argeles by a proxy acting in the name of Lecouturier; whereas the Union Agricola, Arras and the Eden-Bar allege nullity of this procedure in view of the principle that: "No one in France pleads by proxy";

But whereas the request presented to obtain the 2770
authorization to seize no more than the seizure constitute the introduction of an instance; whereas all the authors are in accord, to see in this procedure only a mode of proof tending to establish the existence of the counterfeit; that in consequence the formalities to be fulfilled in order to obtain this result can be fulfilled by the intermediary of a proxy, leaving it to the principal himself to regularly introduce the application in validity of the seizure, which is the first act of the instance begun;

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WHEREAS by the terms of article 17 of the law of June 23, 1857, it is necessary to leave with the holders copy of the objects described or seized, of the order and of the act proving deposit of security if such is the case, the whole, under pain of invalidity; as the seizures practiced at Cerbere against Arras and Eden-Bar on July 8th and Aug. 5th, 1904, have been reported to Vincent Orpy, trustee-sequestrator, named in the official report of the seizure; but as no copy has
been left with the holder of the objects seized, and as 2772
the non-compliance with this formality carries with it the nullity of the seizure, by application of article 17, aforesaid; and although Lecouturier on July 8th served on Durande, receiver of the Arras firm, an order to surrender the merchandise which he has, or will have, as a result of the deliveries by the Union Agricola and notably the 410 cases which are in the station at Cerbere, he did not serve either Durante, or the Company of the South with the request, the order, and the official report of the seizure; as this order cannot

2773 replace the service required by law under pain of nullity;

WHEREAS article 69 of the code of civil procedure prescribes that those who are established abroad must be summoned to the Bar of the Procureur of the Republic in the Tribunal where the application is made; as this formality is prescribed under pain of nullity by article 70 of the same code; as the summons of the Union Agricola to appear before the Civil Tri-
2774 bunal of Grenoble was served on July 21st at the Bar of the Procureur of the Republic at Ceret; whereas the instance being brought before the Civil Tribunal of Grenoble, this summons is void, by application of articles 69 and 70 aforesaid; as this nullity would involve that of the procedures of the seizure of July 8th against Arras if it were not already void of itself, for article 18 of the law of June 23d, 1857, invalidates of right the seizure which has not been followed by a summons within the period of a fortnight and a void
2775 summons must be considered as not existing, the official report would be void for not having been followed by a valid summons within a fortnight of its date;

WHEREAS notwithstanding these nullities the action of the receiver against the Union Agricola and the other defendants subsists, excepting that he must seek elsewhere than in the seizure the proof of the offense of which he complains, proof made in the present suit, since the Union Agricola claims the
2776 right to avail itself of its trade-mark, far from contesting the fact of having used it; as furthermore by the Durand and Audier seizures, regular in form, as well as by the principal instance introduced by the Union Agricola in nullity of the said seizures, the Tribunal has regularly before it the questions raised by the contentions made by the parties to the cause;

WHEREAS in the arguments filed Nov. 12, 1904, Lecouturier contends that the Union Agricola has committed a counterfeit or at least a fraudulent imitation of the marks of which he is the administrator seques-

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trator that this company has committed a usurpation of name within the terms of the law of July 24, 1824, that its acts at least constitute unfair or illicit competition;

WHEREAS the Union Agricola opposes to these conclusions, on the one hand, that the mark adopted by it to distinguish its products constitutes neither a counterfeit nor a fraudulent imitation of the mark of which Lecouturier takes advantage; that article 1 of the law of July 28, 1824, cannot be applied, because it does not 2778
put on its products any name of manufacturer or place which does not conform to the facts; on the other hand, that the claims filed just before the pleadings tending toward the condemnation of the Union Agricola as guilty of unfair or illicit competition, are not within the jurisdiction of the Civil Tribunal and that, further, they are not formally receivable not being contained in the summons introducing the cause;

WHEREAS the controversy is thus clearly defined and whereas the Tribunal must successively examine the 2779
questions which are submitted to it;

AS TO THE COUNTERFEIT AND FRAUDULENT IMITATION.

WHEREAS the present suit presents a special aspect which it is well to define; whereas in ordinary suits for counterfeit there is always a manufacturer whose products have acquired the confidence of the public and whose mark guarantees the authenticity of manufacture, struggling against counterfeiters, who, by 2780
means of a more or less ingenious imitation of his mark endeavor to benefit their products by the favor obtained by the products of their competitor; whereas in the present suit, Lecouturier, receiver of the properties of the Congregation of the Chartreux, is indeed in possession of the mark of the Grande-Chartreuse, but the products which he is having made at Fourvoirie and which he sells to the public under this mark, are not those which the Chartreux Fathers have made according to their process of manufacture and have

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sold up to the time of their expulsion from the Convent of the Grande-Chartreuse; as by application of the law of July 1st, the mark of the Grande-Chartreuse may indeed have remained in the hands of the receiver of the dissolved and expelled Congregation, however the secrets or processes of manufacture have been carried away by the Chartreux, as an unseizable property, since processes not patented remain unknown, and the mark was thus separated from the product of
2782 which it had up to that time guaranteed the production;

WHEREAS, this particular situation resulting from the new legislation brings into presence, on the one hand, the receiver who sells under the old mark of the Grande-Chartreuse a product which is not made by the Chartreux, and, on the other hand, the Chartreux in whom Lecouturier recognizes the right to manufacture cordials according to their processes, but to whom he wishes to forbid the use of their name to characterize and dis-
2783 tinguish the products manufactured by them.

WHEREAS the mark born of the liberty of toil assures to each the credit and renown which he has been able to acquire; as it protects the manufacturer become celebrated by the constant superiority of his products, the fidelity and good faith in his commercial relations; as the mark has value especially by the product that it protects and not by itself away from this product, as in our law, contrary to the legislation of other countries, the product and the mark are not indissolubly bound
2784 together; and if one ascertains the favor which has become attached to the products of the Grande-Chartreuse, made by the Chartreux, it is certain that the Union Agricola had a great interest not to permit the products that it sold to the public to become confused with those of the receiver, but indeed, on the contrary, to distinguish in a precise and clear manner the cordials made by the Chartreux from those made by Lecouturier; as hence the Union Agricola, desirous of distinguishing its products, had to take the necessary steps in order that its manufacture be brought to the

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consumer under conditions which would not permit confusion of which, according to it the receiver alone could benefit, whilst it would itself be subjected to a prejudice; as it affirms to have followed this object in the choice of its label and as it is a question of ascertaining whether the method adopted by it was contrary to its intentions;

WHEREAS articles 7 and 8 of the law of June 23, 1857, punish those who have counterfeited a mark or those who, without counterfeiting a mark have made a fraud- 2786
ulent imitation of it in a manner to deceive the purchaser; as the counterfeit must agree with the complete general reproduction of the mark; as insignificant changes do not circumvent counterfeit if there is a servile reproduction of an essential and characteristic part of the mark (Pouillet No. 139).

WHEREAS the imitation of the mark, which may be obtained by any means that the imitation suggests to the counterfeiter, requires, besides, when the imitation exists in fact, that it be fraudulent, that is to say, made 2787
with a culpable intention, and that it be of a nature to deceive the purchaser; as in order to judge of the greater or less possibility of confusion, the degree of attention of the first comer should not be taken as the standard of comparison, nor of the ignorant and non-intelligent consumer, but the degree of attention of the vigilant consumer, sufficiently careful of his interests (Pouillet 189); as questions of this nature are, above all, questions of fact, left to the sovereign appreciation of the magistrates and for the solution of 2788
which they must study the means of manufacture which are submitted to them, taking into consideration the resemblances and the differences which exist between them:

WHEREAS it follows from deposits made by Abbe Rey that the marks, destined to distinguish from all others the products of his manufacture of cordials, known under the name of products of the Grande-Chartreuse, consist of round and rectangular labels, the said labels being yellow or green and placed the

2789 ones, on the stopper, the others on the body of the bottle itself; as the round labels show outside of a double circular line and parallel to these lines the words "Cordial manufactured at the Grande-Chartreuse or Grande-Chartreuse", then below the signature Garnier with a flourish and one or two globes surmounted by a cross or even without a globe; as the rectangular labels have in a border or frame of shaded pearls, the words "cordial manufact-
2790 ured at the Grande-Chartreuse", and below, to the right and left, the signature L. Garnier, with a flourish the upper line of which is placed below a globe surmounted by a cross; and, besides, watermarked in the pulp a globe bearing a cross surmounted by seven stars, surmounting the signature of L. Garnier;

WHEREAS the characteristic and distinctive elements of this mark consist in the words "Grande-Chartreuse", in the border of shaded pearls, in the signature Garnier and the arms of the Grande-Chartreuse
2791 and in the globe surmounted by a cross surrounded by seven stars; as to further distinguish his products Abbe Rey deposited a form of bottle with a scroll containing in relief or engraved in the glass the arms of the Convent and the words "Grande Chartreuse";

WHEREAS the mark of the vegetable elixir of the Grande-Chartreuse is printed in black on a white background, with globe and cross watermarked in the paper and the signature L. Garnier; as this mark is placed on the flasks of the characteristic form filed;

2792 WHEREAS the mark of the Union Agricola is thus described in the certificate of filing: a large label pasted to the cylindrical body of the bottle and composed of the following elements: 1. at its centre a lozenge of which the upper part is green and the lower part yellow; in the lozenge is watermarked in the pulp of the paper, on the one hand, the letters CAR enlaced in a special manner, the central line terminated by a cross constituting one of the legs of the A; and, on the other hand, surrounding the word CAR three ellipses of which the central

one is constituted by beads of a rosary or of little pearls; 2. words in black and in fancy letters "cordial" above the lozenge "manufactured" to the left of the lozenge, "at Tarragone" to the right of the lozenge, and, "by the Chartreux Fathers" below the lozenge; 3. of a frame formed of fleurs de lis, in black; 2793

WHEREAS the Union Agricola has, besides, filed a bottle with cylindrical body and conical neck, with a butterfly pasted near the neck of the bottle containing the letters CAR; 2794

WHEREAS the description of the two labels thus made in the certificates of filing sets forth the notable differences which distinguish them, which differences are rendered still more apparent by the comparison of the labels once pasted on the bottles;

WHEREAS the trade marks of the Union Agricola distinguish themselves from those of the receiver by their dimension which is at least double, by their color of a green or a yellow less accentuated, by the interior which is checked and not plain, by a different border 2795 without shaded pearls, by the arrangement in four lines in place of two of the elements which compose them, by the green and yellow lozenge which occupies the center, by the absence of any signature or flourish; whereas these differences in the label which strike the eye at first sight and prevent confusion with the old label of the Grande-Chartreuse, are still more accentuated by the differences which exist in the form of the bottle, of the protecting capsule, by the color of the wax, by the absence of a scroll in the glass and by the existence of the monogram CAR which is pasted near the neck of the bottle and attracts the attention of the least attentive consumer; 2796

WHEREAS one should not consider neither the color of the paper, green or yellow, which distinguishes the quality of the cordial, or the words "Cordial manufactured" which is found in both labels; as it is common usage in the commerce in cordials to distinguish them by the color of the label and as the words

2797 "Cordial manufactured" which are not the exclusive property of the receiver and can be employed by all cordial manufacturers, as they do moreover, cannot be retained as characteristic of fraudulent imitation, and when arranged in two lines instead of one, printed in different characters, these words do not present, in the label of the Union Agricola, any resemblance to the label of the Grande-Chartreuse;

WHEREAS the label of the elixir manufactured by
2798 the Union Agricola is green, whilst that of Lecouturier is white; whereas the arrangement of the characters and the form of the flasks are completely different;

WHEREAS it results from all of these compared elements, with imposing evidence, that the Union Agricola has not imitated the mark which Lecouturier uses and that the material elements constituting imitation do not exist, independently of the absence of fraudulent intention which could not be raised against this Company;

2799 WHEREAS Lecouturier contends that, notwithstanding the impossibility of any confusion, the counterfeit exists by this alone that the proprietor of the mark sees the employment by his competitor of the essential element of his mark, and that the Union Agricola has counterfeited the essential element of the mark of the Grande-Chartreuse in using the word Chartreux which is the equivalent of Chartreuse;

WHEREAS if it is true that the usurpation of the essential element of the mark constitutes counterfeiting,
2800 this principle receives its application only when the essential element is the exclusive property of the proprietor of the mark; for example, when it is a question of a phantastic denomination, but it would not be thus when the essential element results from a name of place or a patronymic name which cannot have become the exclusive property of the applicant, and may also be employed by a manufacturer of the same place or having the same name, aside from taking the necessary measures to avoid possible confusion between the

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products of two competing houses, by reason of the similarity of name;

WHEREAS the mark filed by the Abbe Rey does not contain the word "Chartreux," and that even the word Chartreuse which has been filed by him has never been employed as a trade-mark applied to his products; as his label contains only the words "Cordial manufactured at the Grande-Chartreuse"; as the numerous documents of jurisprudence which have decided in favor of Abbe Rey and of its authors 2802
the ownership of the word Chartreuse, by claiming that the word is only an abbreviation of the label which recalls the name of those who manufacture the Chartreuse, and especially the name of the place of manufacture, the Grande-Chartreuse (Applications Aug. 10, 1880), have never taken the word Chartreux as constituting an element of the mark on which it does not appear: that if indeed the Tribunals have condemned, as counterfeiters, merchants who have called their cordial "Cordial of the Chartreux" and 2803
have shown the monks and the convent on their label, it was because these dealers in cordials have, contrary to the law of July 28, 1824, placed on their label a suppositious name of a place and have attributed to themselves the name of a manufacture which did not belong to them (Judgment of the Seine of the 8th of March, 1855); as Lecouturier cannot invoke this jurisprudence against the Union Agricola, which does not employ a suppositious name, but gives the true name of the manufacturers: "The Chartreux Fathers," ex- 2804
cept to examine whether the latter have lost, by application of the law of July 1, 1901, the right to avail themselves of this name, which then alone the receiver could employ;

WHEREAS it is thus established that the Union Agricola has neither counterfeited nor fraudulently imitated the mark of the Grande-Chartreuse of which Lecouturier has been put in possession, and as articles 7 and 8 of the law of June 23, 1857, upon which the receiver relies cannot be applied in the matter;

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AS TO THE USURPATION OF NAME.

WHEREAS article 1 of the law of July 28, 1824, punishes whoever has either affixed, or caused to be affixed by addition, curtailment or by any alteration whatever on manufactured objects the name of a manufacturer other than the one who is the manufacturer, or the firm name of a manufactory other than that where the said objects shall have been manufactured or finally the name
2806 of a place other than that of the manufacture;

WHEREAS the law of 1824 has respected the liberty of industry, has established neither monopoly nor privilege, has permitted a manufacturer to imitate and to copy the methods and processes in any manner whatever; whereas it has solely intended to preserve a principle: the guarantee of the names of the manufacturers and of the places of manufacture, as this law represses only the fact of having placed on the products an indication of origin which is not true, by an-
2807 nouncing a false name of origin or a false name of manufacturer;

WHEREAS the trade-mark filed by the Union Agricola indicates Tarragone as the place of manufacture and the Chartreux Fathers as the manufacturers; as it announces that the cordial is manufactured by the Chartreux Fathers, in the distillery of the Union Agricola, a stock company at Tarragone; as these indications correspond to an existing situation and inform the consumer exactly of the place of manufacture and
2808 the name of the manufacturers; as the law of 1824, which punishes only falsehood, cannot govern a trade-mark in which all the statements agree with the truth;

WHEREAS Lecouturier in order to take advantage of the law of 1824, contends that the Union Agricola cannot avail itself of the words "Chartreux Fathers," because he alone can make use of them to designate the Chartreux as manufacturers, and that this exclusive right belongs to him, by virtue of the law of July 1,

1901, as administrator-sequestrator of the properties of the Congregation of the Chartreux ; 2809

WHEREAS the words " Chartreux Fathers " constitute a name which belongs to the Order of the Chartreux, both in its collectivity and to the monks which form part of that order so long as they remain attached thereto, faithful to the statutes which are the rule of the Congregation ; as the property of this name, as manufacturers, has been recognized in the Chartreux by numerous decisions of justice, which have decided 2810 it in their favor, by virtue of article 1 of the law of July 28, 1824 ; as after their expulsion, if the law of July 1, 1901, which dissolved the Congregations, dispersed persons and properties, has placed under sequestration the properties held by the Congregation, the Chartreux Fathers have none the less preserved their name, as much as an order as monks, a name that they keep in their new residence ;

WHEREAS the right to avail oneself of one's name in the exercise of commerce has always been recognized 2811 and sanctioned by Jurisprudence, leaving it to the Tribunals to repress any abuse which may be made of this right, in order to usurp by the aid of fraudulent confusion the advantages of the credit and of the reputation acquired by a third party already known by the same name, but without being able to go so far as to deprive a merchant of the right to the use of the name which belongs to him in the acts of his commerce, by an absolute prohibition which would constitute a blow struck at his property rights. (Cassation, Jan. 30, 2812 1878) ;

WHEREAS this principle has been respected, either when a trade-mark has been the object of an expropriation for public purposes, and that the proprietor of the mark has wished, after the expropriation, to continue the commerce and avail himself of his name, or, when a mark has been seized by a creditor from his debtor, and the latter has created another business under his patronymic name (Pouillet, Nos. 91 and 601), or even when the

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proprietor of a mark composed of his name has sold his business with his mark and has filed a new mark in which he has indicated his patronymic name; as in this last hypothesis of voluntary assignment, very different from the present case, the Court of Cassation has decided that if the acquisition of a business of which a trade-mark formed part gives to the purchaser the right to avail himself of this mark, such as it had been created by the former establishment, this right
2814 would not be absolute, and must, when one of the principal elements of the industrial mark is a proper name, be limited by the necessity of preserving to the proprietor of this name that which is inherent thereto by use without abuse (Cassation, April 20, 1896).

WHEREAS this respect of the property of the name and of the right to avail oneself of it has been subject to exception only when the proprietor of this name, without using it himself, without indulging in business, or interesting himself in a business, cedes his name to
2815 a third party for a fraudulent purpose;

WHEREAS it follows from these principles that the words "Chartreux Fathers" even had they formed part of the business of which Lecouturier is administrator-sequestrator, either as a trade-mark, or as a commercial name or firm name, the Chartreux Fathers would still have the right to avail themselves of their name as manufacturers in order to designate their products, but must avoid confusion between the cordials manufactured at Tarragone and those manufactured at
2816 Fourvoirie and as, from this point of view, the precautions taken by the Union Agricola in its labels, its flasks and its bottles would be sufficent to prevent confusion between the two commercial establishments;

But WHEREAS Lecouturier, as administrator-sequestrator of the properties of the congregation and of the business of Abbe Rey has no right to the words "Chartreux Fathers," as this name has never formed part of the trade-mark of the Grande-Chartreuse; as the products sold to the public have been sold under the name of the Grande-Chartreuse, which was the

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trade name of the establishment, as was recognized in the judgment of April 23, 1904, which the receiver relies on; as the commercial name was that of Garnier, as is held in the same judgment which grants to Lecouturier the exclusive right to the industrial and commercial use of the name of L. Garnier; as the Chartreux who were the manufacturers of the products of the Grande-Chartreuse have never distinguished their products by their name of Chartreux, have never given this name to their commercial establishment, neither 2818
on the labels, nor on invoices, nor in correspondence, and, as, if the law of July 1, 1901, has had for effect to dispossess them of their business and of its accessories, it has not been able to take from them their name which was never a dependancy of the said business;

WHEREAS the Chartreux who have preserved the right to manufacture cordials by their particular processes of manufacture have also the right to advertise their products to the public or to distingush them by their name as manufacturers "Chartreux Fathers" 2819
which has remained their property; as hence Lecouturier is wrong in charging the Union Agricola and the Chartreux with a usurpation of name;

WHEREAS the solution admitted by the Tribunal in the reports of the Union Agricola and Lecouturier render unnecessary the examination into the subsidiary questions raised by the conclusions of the other defendants: Durand and Consorts;

AS TO UNFAIR OR ILLICIT COMPETITION. 5820

WHEREAS Lecouturier contends that engaging the services of the Chartreux Fathers, in availing themselves of the old agents of the Grande-Chartreuse, in obtaining a publicity which throws discredit on the old mark of the Grande-Chartreuse, the Company of the Union Agricola has committed acts of unfair or illicit competition for which he demands reparation;

WHEREAS the summons of Lecouturier and of the Union Agricola which have put before the Tribunal the

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present suit had in view only the seizures made by the receiver and reveal no deed of unfair or illicit competition ; as they tend solely to the nullity or to the validity of the said seizures ; as Lecouturier formulated this application only in the arguments made Nov. 12, 1904 ; as the Union Agricola opposes to these arguments, on the one hand, the incompetence of the Tribunal and, on the other hand, the non-receivability under the form of such an application introduced by

2822 mere argument ;

WHEREAS it is an invariable principle that actions between merchants based on acts of unfair competition are within the competency of the Tribunals of commerce ; as it cannot be contested that there is involved in the case a litigation between Lecouturier exploiting a commercial mark and the Union Agricola, a commercial company ; as even if it is admitted that when the civil Tribunal is vested with an action of counterfeit of which the exclusive competency is

2823 reserved to it by the law of 1857, it can accessorily and as annexed to that action, take cognizance of the facts constituting the unfair competition and which are inherent in the counterfeit, by virtue of the plenitude of jurisdiction of the civil Tribunals, this principle being applicable only when the Tribunal, recognizing the existence of the counterfeit and condemning it, decides the facts of unfair competition as accessory to the principal suit ; as it cannot be thus, when the facts of counterfeit

2824 or fraudulent imitation being absent, it remains to decide only on the elements by which it is aimed to bring proof of an unfair or illicit competition ; as the civil Tribunal cannot then hold to those facts which, separate from the counterfeit, escape its competency and they must be referred to the notice of the consular judges ; as hence the Tribunal which rejects the action of Lecouturier, as far as concerns the counterfeit or the fraudulent imitation of the mark of the Grande-Chartreuse, is incompetent to pass upon his application looking to the condemnation of the

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Union Agricola as culpable of unfair or illicit competition (Pouillet, Nos. 270 and 671. Montpellier, February 24, 1879 ; Nancy, March 16, 1900) ; as Lecouturier and the Union Agricola have, without doubt, great interest in rapidly securing the opinion of Justice on the facts qualified as unfair or illicit competition which they may be in a position to reciprocally reproach each other, but as the declaration of incompetency governed by the principles, will cause them no grievance on this point, since the matter, by its nature 2826
and its importance, must surely be carried before the second degree of jurisdiction, and as it will be possible for the parties, the cause being in proper condition, to go to the very basis before the Court of Appeals, by application of article 473 of the code of civil procedure and to thus obtain a solution in which the incompetency of the Tribunal will have caused no delay ;

WHEREAS the seizures effected by Lecouturier in July and August, 1904, have incontestably caused an injury to the defendants for which reparation is due 2827
them, with the exception always of Arras, as mere representative of Dubonnet and of Brezun & Co., consignees-shippers, which justifies no personal damage outside of the costs of the suit ; as the Tribunal has sufficient elements in order to fix the figures of damages to allow, bearing in mind for the Union Agricola the trouble that these seizures have brought into its commerce, and especially the immobilization, since July 8, 1904, of 410 cases of cordials, representing a capital of 35,000 francs ; and, for the other defendants 2828
for the time during which they been deprived of their merchandise, that is for Durand and Victor Audier a period of about 30 days, and for the Eden-Bar a deprivation of a very much shorter period ;

WHEREAS the party who fails must bear the expense ;

For these reasons

The Court, judging ordinary conditions and in first resort, after hearing counsel and lawyers for the parties and M. Despelou, Attorney of the Republic, in his argument, after deliberating thereon conformably with

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the law, without discussing all contrary claims and arguments;

Pronounces the junction of the suits introduced by writs of the 11, 15, 16, 18, 21st of July and 19th of August, 1904;

Annuls for defect in form, by application of articles 17 and 18 of the law of June 23, 1857, and of articles 69 and 70 of the code of civil procedure the seizures made at Cerbere July 8th and Aug. 5, 1904, as
2830 well as the subpœna of July 21st to the Union Agricola;

Decides that the Union Agricola has committed neither counterfeit nor fraudulent imitation; annuls, consequently, the seizures practiced at Marseille and at Valence on July 4th and 8th, 1904;

Decides that the Union Agricola has the right to employ on its label the name "Peres Chartreux" to designate the manufacturers of the cordial manufactured at Tarragone and that it has not committed the
2831 offense of usurpation of name;

Declares itself incompetent to pass upon the question of unfair or illicit competition;

Condemns Lecouturier, in his capacity, to pay with legal interest as damages to the Union Agricola, the sum of 1800 francs, to Durand the sum of 75 francs, to Audier the sum of 75 francs, to the Eden-Bar Co. the sum of 25 francs;

Condemns him furthermore to the expenses of all the parties.

2832 Thus judged and pronounced by the First Chamber of the Civil Tribunal of the First Instance of the District of Grenoble (Isere) in public audience in the ordinary chamber of its sittings located in the Palace of Justice, Place Saint André, on the day, month and year as above,

At which were present

MESSRS. RABATEL, President.
CHEVALLIER, Judge.

[Here follow certifications and legalization.]

2833

NEW YORK, August 8, 1907.

I, the undersigned, do hereby declare under oath, that I have made the above translation of the copy of the decision of May 18, 1905, *in re* Union Agricola vs. Lecouturier. My occupation has been that of translator in patent causes for more than fifteen years, during which time I have made a very large number of translations from French into English. I believe the above to be a correct and careful translation.

2834

HERMAN KUSTERER.

Sworn and subscribed to before me this ninth day of August, 1907.

(Signed) WM. LOWE,
[Notarial Seal.] Notary Public No. 184,
New York County.

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Complainants' Exhibit 22 (Weiss). Judgment of the Court of Appeals of Grenoble of Dec. 12, 1905.

EXTRACT FROM THE MINUTES OF THE CLERK'S OFFICE OF THE COURT OF APPEALS OF GRENOBLE.

The Court of Appeals of Grenoble, First Chamber, has rendered in public audience on Tuesday, December 12, 1905, the following decision :

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Between :

Mr. Celestin-Marius Rey, priest, domiciled at Barcelona (Spain), 21, Calle Fontrodone, appealing from the decision in urgency delivered by the President of the Civil Tribunal of Grenoble on February fifteenth, nineteen hundred and five, by application of March third, nineteen hundred and five, Party of the first part

And Mr. Henry Lecouturier, judicial administrator at the Civil Tribunal of the Seine, domiciled at Paris,

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28 Rue du Mont-Chabor, acting in his capacity of receiver and administrator-sequestator of the properties of the Congregation of the Chartreux, duties conferred upon him by order of the Civil Tribunal of Grenoble of March thirty-first, nineteen hundred and three, and who was duly served Party of the second part;

Maitre Clement, attorney for Abbé Rey, counsel Maitre Morin, attorney, concluded that it may please
2838 the court:

In compliance with the appeal interposed, to reverse the order of the President of the Civil Tribunal of Grenoble of February fifteenth, nineteen hundred and five, and by new decision:

State that the writ of February fourth, nineteen hundred and five, having in view the interpretation and the extension of the order of May seventeenth, nineteen hundred and four, was void as the President was incompetent to decide, the said decision
2839 being before the court by the appeal interposed on May nineteenth and twentieth, nineteen hundred and four, and the court alone being able to interpret it or extend it;

State that the writ could not be modified orally without a new writ, thus converting it into a claim new to the main cause, that furthermore all applications relative to the trademarks filed in foreign countries was beyond the competency of the President of the lower courts, either by lack of urgency, or because the basis
2840 of the claim was in litigation and the measure demanded prejudiced the main cause, the Abbe Rey being sole proprietor of the marks filed in foreign countries, and as the law of July first, nineteen hundred and one, cannot be applied to properties existing in foreign lands.

Condemn Lecouturier to the costs, return of fine, with outlay payable to Maitre Clement.

Maitre Rabatel, attorney for Lecouturier, pleading counsel Maitre Sarrante of the Paris bar, concluded that it may please the court to:

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State and declare Rey to have no ground for his demands, views and conclusions, consequently to overrule his appeal.

Confirm purely and simply the decision in question, condemn the Abbe Rey to the fine and all expenses, making the proper returns to Maitre Rabatel, attorney.

In an instance pending between the above named, the President of the Civil Tribunal of Grenoble, sitting in urgency, delivered on February fifteenth, nineteen hundred and five, a decision to the terms and purposes 2842
of the same reference is made for the most ample recital of the present question and the enacting part of which is worded as follows:

"For these reasons, we, President, sitting in urgency, rejecting all contrary demands and exceptions, state that by extension of the powers previously conferred upon him by decree of May seventeenth last, Leconturier, in his capacity, has powers as administrator-sequestrator charged with the liquidation of the properties of the Congregation of the Chartreux at present dissolved, to 2843
take all steps and to follow out all procedures tending to the transfer and to the registration in his name of the trademarks precedingly registered in foreign lands, notably in England and in the United States of America, in the name of Marcel Marie Grezier and that of Celestin Marius Rey, relating to the manufacture of the cordial called Chartreuse, upon condition at the expiration of his office, to have them transferred or renewed in the name of the one definitely adjudged proprietor of the commercial holdings in question or of 2844
the purchaser of these holdings, in case of public sale;

"State that he has likewise power to receive all of the cases of merchandise addressed by him to England and held by the Commissioner of Customs of His British Majesty, as also to renew all trademarks in the countries where they would lapse, not excepting the settlement by competent jurisdiction of the questions which would arise in this respect.

"Condemn Abbé Rey to the costs, and state that the

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present order will be provisionally executive, notwithstanding opposition or appeal, without bond.

" Thus judged and pronounced."

By writ of date of March third, nineteen hundred and five, the Abbé Rey filed an appeal from this decision.

Upon this action, containing the appointment as attorney in the person and office of Maitre Clement, attorney at the Court of Grenoble,

2846 Mr. Lecouturier appointed Maitre Rabatel as his attorney and the cause was thus at issue before the court.

The cause was assigned to the first chamber and after instructions from both parties set down for pleading in the audience of July third, nineteen hundred and five, then postponed to that of December fourth and continued to that of December fifth, nineteen hundred and five.

In the said audience the above transcribed con-
2847 clusions were taken up and developed by the attorneys and lawyers of the parties.

The Public Prosecutor was heard, the cause taken under deliberation, and the court rendered its decision at the audience of this day.

Of right: The cause presented for solution the following questions:

As to the respective conclusions of the parties?

As to the damages and the costs?

The act of which was thus drawn up by the under-
2848 signed attorney and that of the Abbe Rey.

Signed: A. CLEMENT.

In the year nineteen hundred and five and on December fifteenth,

I the undersigned bailiff of the court, at the request of Maitre Clement, attorney, have served copy of the present papers on Maitre Rabatel, also an attorney, at his office, speaking to him in person, and who made objection.

Cost sixty-eight centimes.

Signed: OGIER.

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ORDER.

The present questions have been adjusted by default against Maitre Rabatel, attorney, who did not appear although regularly cited to be present before us this very day.

We consequently order that the present questions be drawn up as they have been announced.

At the Palace, at Grenoble, December eighteenth, nineteen hundred and five. 2850

The First President

Signed : PAILHÉ.

DECREE.

WHEREAS an order delivered February fifteenth, nineteen hundred and five by the President of the Tribunal of Grenoble, sitting in urgency, has authorized Lecouturier as receiver of the dissolved congregation of the Chartreux and by extension of his powers pre- 2851 viously conferred upon him, to make all applications and to follow up all procedures tending to the transfer and the registration in his name of the trade-marks precedingly registered in foreign countries, notably in England and in the United States, in the names of the priests, Grezier and Rey, in order, at the cessation of his service as receiver to cause them to be transferred or renewed in the name of the one who will be adjudged proprietor of the commercial holdings or of the buyer of the holdings, in case of a public sale ; 2852

This same order likewise authorized Lecouturier to receive the cases of merchandise addressed by him to England and held by the English Customs Commissioner, and to renew all trade-marks in the countries where they reached their expiration, and to have settled by competent jurisdiction the questions which might be raised in this respect ;

Rey has filed appeal from this order, and is proceeding for reversal for the two-fold reason :

1. That Lecouturier had requested by application

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of February fourth, nineteen hundred and five, the interpretation and extension of the urgency order of May seventeenth, nineteen hundred and four, and that the Judge in the urgency proceedings was incompetent to hear or interpret a decision referred to the Court of Appeals by the writs of May nineteenth and thirtieth, nineteen hundred and four ;

2. That the application of Lecouturier raised the question as to whether the law of July first, nineteen
2854 hundred and one, controlled in foreign countries the properties of the dissolved congregations, and that this question was beyond the competency of the judge in the urgency proceedings ;

Adopting the ground of the first judge as regards the first count of the appeal.

But whereas, on the second count, the application of the receiver, tending toward the recognition of his right to cause to have transferred and registered in his own name the trademarks, registered in foreign lands,
2855 especially in England and in the United States of America, put before the judge in the urgency proceedings the question as to whether the law of July first, nineteen hundred and one, which is a law of exception, controls outside of French territory the properties of the dissolved congregations, or whether its action is limited to the properties located in the territory, and whether the trademarks claimed by Lecouturier and registered in foreign lands are an accessory of the commercial holdings of Fourvoirie, coming
2856 under this heading by the liquidation ordered by the decision of March 31, 1903, or whether they constitute a property distinct and independent of this commercial holding ;

WHEREAS the measure applied for by Lecouturier was thus of a nature to prejudice the holding and to seriously prejudice the main action and that the judge in the urgency proceedings was therefore incompetent to judge ;

Whereas his incompetence extended furthermore to the other two points of the application of the receiver;

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For these reasons, the Court

Having heard the attorneys and lawyers of the parties, as also the Attorney General in his conclusions, and after having deliberated,

Granting the second count in appeal filed by Rey, reversing, states that the judge of the urgency proceedings was incompetent;

Consequently annuls the decision of February fifteenth, nineteen hundred and five;

Orders withdrawal of the fine; 2858

Condemns Lecouturier in his capacity to all the costs of the first instance and the appeal, which will be charged to the liquidation costs and advanced by the public treasury, in accordance with the prescription of the second decree of August 16th, 1901;

Deducting therefrom the expenses in favor of Maitre Clement, attorney who affirms having advanced them.

Thus adjudged and pronounced in the public hearing of the Court of Appeals of Grenoble, first chamber, on Tuesday, December twelfth, nineteen hundred and 2859 five, in which sat Messrs. Pailhé, First President, Varenne, President, Garnier, Duharnel and Berjot, counsellors.

In the presence of Mr. Fontanille, Advocate General, Assisted by Mr. Testout, Court Clerk.

On the court copy: signed:

PAILHE, First President, and TESTOUT, Court Clerk.

[Here follow certifications and legalization.]

2860

NEW YORK, May 6, 1907.

I, the undersigned, do hereby declare, under oath, that I have made the above translation of the copy of the decision of December 12, 1905, in *re* Rey vs. Lecouturier. My occupation has been that of translator in patent causes for the last fifteen years during which time I have made a very large number of trans-

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lations from French into English. I believe the above to be a correct and careful translation.

(Signed) HERMAN KUSTERER.

Subscribed and sworn to before me this 18th day of May, 1907.

(Signed) H. J. HASBROUCK,
[SEAL.] Notary Public, No. 224,
New York County.

2862

Complainants' Exhibit 23 (Weiss). Judgment of the Court of Appeals of Grenoble of March 27, 1906.

EXTRACT FROM THE MINUTES OF THE CLERK'S OFFICE
2863 OF THE COURT OF APPEALS OF GRENOBLE.

The Court of Appeals of Grenoble, first chamber, has rendered in public audience of Tuesday, March twenty-seventh, nineteen hundred and six, the following decision:

Between:

Mr. Henry Lecouturier, judicial administrator at the Civil Tribunal of the Seine, domiciled at Paris, 28 rue du Mont Thabor, acting in the capacity of adminis-
2864 trator-sequestrator and receiver of the properties of the Congregation of the Chartreux, complainant for the interpretation of the decision rendered by the Court of Appeals of Grenoble on July nineteenth, nineteen hundred and five, by application under date of December twenty-sixth following, on the one hand;

And:

Mr. Celestin Marius Rey, priest, domiciled at Barcelona, (Spain), at present at Farnetta, community of Lucques (Italy), defendant, on the other hand;

Maitre Rabatel, attorney for Mr. Lecouturier, coun-

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sel Maitre Sarrante, lawyer, of the Bar of Paris, has concluded that it may please the Court:

To state and declare, by way of interpreting its decree of July nineteenth, nineteen hundred and five, that the assets of the liquidation of the Chartreux comprises, not only the Trade Marks filed in France by the different representatives of the Congregation, but also the Trade Marks filed in the different countries of the world, where the formalities have been complied with for this purpose; 2866

To condemn Mr. Rey to all costs, with outlay to Maitre Rabatel, attorney, upon his legal affirmation;

With all reservations.

Maitre Clement, attorney of the Abbé Rey, counsel Maitre Morin, attorney, has concluded that it may please the Court:

Without discussing any contrary means or purposes, with which Lecouturier shall be dismissed:

To state that the application of Lecouturier for the interpretation of the decree of July nineteenth, nine- 2867 teen hundred and five, is not acceptable in the matter, as this decision presents neither obscurity nor ambiguity, and does not decide as to the right of Lecouturier to the trade marks filed by the Abbé Rey in foreign lands;

To state that the conclusions of Lecouturier have as result to bring into the decision of July nineteenth, nineteen hundred and five, by new motives and a new reasoning, modifications which cannot be asked for in the way of interpretation, leaving it to the receiver to 2868 have recourse to such means as may seem proper to have decided the new question which he raises;

And, in the case the Court should admit the acceptability of the application of Lecouturier in its form;

To state that the law of July first, nineteen hundred and one, as a police law of the State, is not applicable outside of French territory, neither to persons, nor to properties in foreign lands;

To state that the manufacturers, dispossessed of the right to exercise their industry on French soil, as

2869 members of an expulsed, dissolved congregation, have preserved, after as before, their commercial personality, and, masters to carry their establishments or their industry to foreign lands, they have kept the exclusive property of the exterior signs which describe their products;

To state that the trademarks filed in foreign lands constitute a property distinct from the commercial holdings in France, by reason of the differences pre-
2870 sented by foreign law, either as to the constitutive elements of the trade mark or as to the assignment of the said marks, with or without the product with which the mark is identified;

To state, further, that these questions, the solution of which depends on the foreign legislations, and which must be acted on in foreign lands, can only be judged by the foreign tribunals, which will apply the law of each country;

To dismiss consequently all demands, purposes and
2871 conclusions of Lecouturier; to condemn him to the costs, with returns to Maitre Clement, upon his affirmation of right;

Under the most express reservations of the appeal formulated by the Abbé Rey against the decree of July nineteenth, nineteen hundred and five, the present conclusions cannot be considered, either as a renunciation of this appeal, or as an acquiescence to the said decree.

Facts: The first chamber of the Court of Appeals
2872 of Grenoble has rendered, on July nineteenth, nineteen hundred and five, between the above-named parties, a decision to the statements and reasonings of which reference is made for a more ample statement of the presents, and which was thus conceived:

"Without discussing the request for non-admissibility made by Lecouturier, and based on that Rey does not fulfill the conditions to which article sixteen of the law of July first, nineteen hundred and one, has subordinated the action for recovery of members of dissolved congregations, rejects it

as not justified and overrules the plea of Maitre Rabatel; 2873

"Declares consequently Rey capable of invoking the public act by virtue of which he had acquired by the performance of service the commercial holding claimed by Lecouturier;

"Finally, dismisses Rey in his appeal and its purposes and conclusions, and confirms the decision of the Civil Tribunal of Grenoble of April twenty-third, nineteen hundred and four, to be executed in its form and 2874 terms;

"Condemns Rey to the fine and costs, payable to Maitre Rabatel, attorney, who affirms having advanced them."

The enacting part of the decision confirmed by the said decree was conceived as follows:

"The Tribunal, etc..... and deciding on the action of claim introduced by Lecouturier, in his capacity against Rey, rejecting from the debate the confidential correspondence seized at Beauregard, by 2875 reason of the respect due to the privacy of letters, and of the impossibility to make use thereof in a civil process foreign to the addressee and addressor;

"States that the commercial holding as manufacturer of cordials, elixirs and other products, carried on as well at the Grande-Chartreuse as at Fourvoirie, under the commercial title of Cordial manufactured at the Grande-Chartreuse, Vegetable Elixir of the Grande-Chartreuse, Products of the Grande-Chartreuse, comprising the custom and the good will, the proprietorship of the trade marks and commercial names, 2876 serving to distinguish these products, as also the shape of the bottles, flasks, boxes and cases serving to contain them, the exclusive right to the industrial and commercial use of the name L. Garnier, the furniture, the utensils of all kinds serving in the operation, the merchandise, first materials, manufactured products, located in the storage houses, cellars and in bond, and all other appurtenances or in general any dependencies of the said holdings, which formed the subject

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of the deed of sale of November twentieth, eighteen hundred and ninety-seven, are in reality the property of the Congregation of the Chartreux, this deed being void as passed to Rey, a member of the Congregation, —whom the receiver has established by serious, precise and concordant presumption to be the representative of the Chartreux,

"States, consequently, that the said commercial holding, with all its accessories, comprising therein
2878 the trade mark, is a property held by the Congregation, within the terms of article eighteen, paragraph three, of the law of July first, nineteen hundred and one, and forms part of the assets to be liquidated.

"Condemns Rey to the costs with respect to Lecouturier, etc. * * * "

By request under date of December twenty-ninth, nineteen hundred and five, containing the appointment of attorney in the person of Maitre Rabatel,—Mr. Lecouturier served notice on the Abbe Rey as to the
2879 interpretation of the above-named decree of July nineteenth, nineteen hundred and five;

Upon this notice, Maitre Clement appeared for the Abbe Rey, and the case was thus at issue before the Court;

The cause, put on the docket, assigned to the first chamber, and regularly set forth by both parties, was, after several postponements, finally set for pleading in the audience of March twentieth, nineteen hundred and six;

2880 At the said audience, the conclusions above transcribed were taken and developed by the attorneys and lawyers of the parties.

The Public Prosecutor was heard, and the cause taken under deliberation was set for the audience of this day for the handing down of the decision.

Of right, the cause presented the following questions for solution:

What is to be decided as to the respective conclusions of the parties?

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As to the permissibility of the application for interpretation ?

As to the costs ?

The act of which was thus drawn up by the undersigned attorney, and that of the Abbé Rey, defendant.

Signed : A. CLEMENT.

In the year nineteen hundred and six and April second.

I, bailiff of the court, subscribed, at the request of Maitre Clement, attorney, have notified and left copy 2882
of the present with Maitre Rabatel, also attorney, in his study, speaking to him in person, and who made objection.

Cost : Sixty-eight centimes.

Signed : OGIER.

The present questions have been decided by default against Maitre Rabatel, attorney, who has not appeared, although regularly cited to appear before us this very day ;

We consequently order, that the present questions 2883
be drawn up such as they have been announced.

At the Palace, at Grenoble, April fourth, nineteen hundred and six,

The First President, Signed : PAILHÉ.

DECREE.

In view of the fact that a decision of the Civil Tribunal of Grenoble, under date of April twenty-third, nineteen hundred and four, complying with the appli- 2884
cation of Lecouturier, in his capacity, and declaring the Abbe Rey the agent of the Congregation of the Chartreux, decided that the commercial holding as manufacturer of cordials, elixirs and other products, carried on as well at the Grande Chartreuse as at Fourvoirie * * * comprising the custom, the good will, the proprietorship of the Trade Marks and commercial names serving to distinguish these products, * * * and all dependencies generally whatsoever of the said commercial holding, which formed the subject

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of the deed of sale of November twentieth, eighteen hundred and ninety-seven, are the property of the Congregation of the Chartreux ;

That this decision consequently declared that the said commercial holding, with all its accessories, comprising therein the trade mark, is a property held by the Congregation within the terms of article eighteen, paragraph three, of the law of July first, nineteen hundred and one, and forms part of the assets to be
2886 liquidated ;

That the said decision has been confirmed by decree of this court of July nineteenth, nineteen hundred five, holding that the commercial holding acquired apparently by Rey, with all its accessories, and notably the Trade Mark, constitutes in reality a property held by the Congregation of the Chartreux at the date of the promulgation of the law of July first, nineteen hundred and one, and is thus subject to the liquidation ordered by the decision of March thirty-first, nineteen
2887 hundred and three ;

In view of the fact that Lecouturier, taking his basis from the fact that the decree of July nineteenth, nineteen hundred and five, lacks precision in that it does not specify in a sufficient manner that the trade marks filed in foreign lands are accessories of the commercial holding of Fourvoirie, applies to the Court to interpret it in the sense that the assets of the liquidation with which he is proceeding comprises, not only the trade marks filed in France by the representative of the con-
2888 gregation, but also those which are filed in the different countries where the required formalities have been complied with for this purpose ;

Whereas, the right to demand the interpretation of a judicial decision is only open to the parties when some of its dispositions are obscure, ambiguous or contradictory, and as it is not permissible that the Magistrates, under pretext of interpretating their decision, make any modification therein or add thereto a new disposition ;

The decision, according to which the commercial

holding acquired by the Abbé Rey, on November twentieth, eighteen hundred and ninety-seven, with all its accessories, comprising therein the trade mark, was held by the Congregation of the Chartreux at the date of July first, nineteen hundred and one, and forms part of the assets to be liquidated, has decided in a non-equivocal manner the litigation brought before the court, such as it had been submitted to it, and requires no interpretation ; 2889

The claim of the receiver to the property of the trade marks registered in the foreign countries, raises the question whether the law of July first, nineteen hundred and one, which is a law of exception and police, controls or not, beyond the territory of the Republic, the properties of the dissolved Congregations, and whether the trade marks registered in foreign lands are an accessory of the commercial holding of Fourvoirie, thus coming under this title into the liquidation, or whether they constitute a distinct and independent property from this commercial holding : 2890 2891

The question has not been debated between the parties, and the court would not have failed, if it had been submitted to it, to treat upon it in the counts of its decision, in order to solve it in its disposition ;

The silence in this respect, exclusive of any debate on this point, does not allow of admitting, as being implicitly contained in the decree, in an ambiguous or equivocal form, the decision of which Lecouturier claims the benefit, and as the interpretation which he solicits from the court would have as effect to extend beyond what was its sole object, the matter judged by the decree of July nineteenth last ; 2892

Such an application must be rejected as not receivable, and it is left to Lecouturier to have recourse to such means as may be deemed proper ;

For these reasons, the Court

Having heard the attorneys and the lawyers of the parties, as also the Public Prosecutor in their conclusions and after having deliberated,

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Without discussing the demand of Lecouturier in his capacity, declares it non-receivable, and condemns him to the costs, payable to Maitre Clement, attorney, who affirms having advanced them.

Thus decreed and pronounced in public audience of the Court of Appeals of Grenoble, first chamber, on Tuesday, March twenty-seventh, nineteen hundred and six, where sat Messrs. Pailhé, first president, Varenne, president, Garnier, Duhamel, Berjot, Dullin and Bernard, counsellors ;

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In the presence of Mr. Fontanille, Advocate General.

Assisted by Mr. Testout, Court Clerk.

On the original signed :

PAILHE, first president, and TESTOUT, Court Clerk.

Registered at Grenoble, on April second, nineteen hundred and six, folio fifty-eight, section four ; received thirty-seven francs, fifty centimes.

Signed : BEGON, receiver.

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[Here follow certifications and legalization.]

NEW YORK, May 6, 1907.

I, the undersigned, do hereby declare under oath, that I have made the above translation of the copy of the decision of March 27, 1906, *in re* Lecouturier vs. Rey. My occupation has been that of translator in patent causes for the last fifteen years, during which

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time I have made a very large number of translations from French into English. I believe the above to be a correct and careful translation.

(Signed) HERMAN KUSTERER.

Subscribed to and sworn to before me this 18th day of May, 1907.

(Signed) H. J. HASBROUCK,
Notary Public, No. 224,
New York County.

[SEAL.]

2897

Complainants' Exhibit 24 (Weiss). Opinion by M. Andre Weiss.

REPUBLIC OF FRANCE,
City of Paris,
U. S. CONSULATE-GENERAL, } ss. :

The undersigned counsellor, André Weiss, Professor of the Faculty of Law of the University of Paris, Member of the Institute of International Law, having 2898
been sworn, declares as follows :

Having been consulted on the point whether Mr. Lecouturier, appointed by decree of the Civil Tribunal of Grenoble, under date of March 31, 1903, as administrator-sequestrator and receiver of the properties of the Congregation of the Chartreux, upon the dissolution of this congregation, has the right to exploit *outside of France* the trade marks employed to distinguish the products of the manufacture of the Chartreux, to take advantage of the registration of these 2899
marks, made in *foreign lands* by the Abbe Rey as also by his predecessors, and to apply for the transfer of the same to his name, *is of the negative opinion.*

He bases his conviction on the following considerations, which answer the three questions submitted to his examination :

1. How far does the application of the French laws known as *police and safety laws* extend ? Do persons and property located in foreign lands come under their provisions ? 2900

2. What is, from this point of view, the character of the law of July 1, 1901, in so far as it regulates the fate of religious congregations, and the measures taken for the execution of this law ?

3. Is it possible, by virtue of this law and the decisions of the French courts, to claim, in foreign countries, the right of exploitation of foreign trade marks, under pretext of the more or less close connection which exists between these marks and the marks exploited in France ?

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I.

Among the laws in which every state, master of its territory and of its subjects, puts down the expression of its sovereign power, there are those which above all have for their object to serve private interests. It is a question of the rights of the individual, of his condition, of his capacity, of the protection which should be
2902 given him; it is a question of his patrimony; it is a matter of the legal acts he can do. These laws, whether in force by imperative will, or whether they merely interpret the autonomous will of parties, are not necessarily limited in their action, to the territory where they were put into force; made by the citizens of the State by which they were promulgated, they follow them or may follow them far beyond its frontiers: the tie of nationality, the relation of subject which binds them to this State, makes
2903 it a duty for these latter to conform their conduct thereto, in a measure as it is possible for them, in the measure also in which the facility is left them by the State the territory of which they inhabit. The private interest laws are *personal* laws; it depends on the legislator, in so far as the foreign sovereignty opposes no obstacle thereto, to claim for themselves the obedience of its expatriated subjects; with regard to them, *extraterritoriality* is the rule. It is this extraterritoriality which article 3, paragraph 3 of the
2904 French Civil Code proclaims, when it decrees that "the laws concerning the state and capacity of persons govern Frenchmen *even when residing in foreign countries.*" And by the sole fact that the aforesaid text mentions only the laws of state and capacity, it marks the will of its authors not to interfere whatever with the sovereign laws of other countries, especially to the rules which they may have formulated touching upon the management of properties which are on their territories.

But, besides and beside these laws of private

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interest, of these personal laws, which can be extra-territorial, there are those which solely follow the satisfaction of a social interest, which, beyond the individual, sometimes against the individual, were inspired and dominated by the necessity of giving society the arms and the means of action which it deems necessary to protect itself against the dangers which threaten it.

These laws of social guarantee and defense are essentially *territorial*, in the sense that all that lives 2906
and all that is within the frontiers of the state which has made them is subjected to their strict observance: neither foreigners nor indigents can refute their dominance: "Each one of these laws represent some principle deemed indispensable to the peaceful existence of a society and to the satisfaction of the common needs of the members which compose it. The infractions which may be made reflect on the entire society; it does not require more to see that infractions of this kind cannot be tolerated, no more by foreigners than 2907
by indigents." (Pillet, Principles of International Private Law, p. 292). This is the rule unanimously professed by the authors, since the most remote times; all recent legislations have adopted it, and the French Civil Code of 1804 did not fail to reproduce it; it is this which article 3, paragraphs 1 and 2 present to us in these words: "The *police and safety* laws obligate us all who live in the territory.—Landed properties, even those possessed by foreigners, are controlled by the French law." 2908

The *police and safety laws* in question in this article and which must be respected by foreigners as well as Frenchmen themselves are not alone, as we may be tempted to believe, the laws having a repressive character; they are "all those which have for their object the safety of persons or properties and the maintenance of good order," (Aubry and Rau, *Course of French Civil Law*, t. i. 5th Edition, paragraph 31, p. 131; Surville and Arthuys, *Elementary Course of International Private Law*, 4th

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edition, p. 41; Nancy, February 9, 1886; Dalloz, 1887, 2.31; Rouen, 28 January, 1903; *Journal of International Private Law*, 1903, p. 585), or, in other more general terms, all acts of public authority which relate to material order, economical or moral, health and the preservation of the French State.

Independent of any consideration of persons inspired by the exclusive interest of the society which considered them necessary, that is to say of a political
2910 organization confined within narrow limits, these laws cannot generally, unless such purport be clearly expressed by the legislator himself, extend their action to a foreign territory. Whilst the individual, by the natural fact of his existence, has the right of protection by the State to which he is connected by his nationality, into whatever localities the hazards of his career or his movements may carry him, and hence, the strict obligation to conform to the laws which have organized this protection, and the application of which the
2911 foreign authorities have no right to oppose, it is impossible to understand in the name of what principle this State would claim the compliance of other States, the recognition and observation of legislative measures, which by the very purpose they aim at, have no utility, no reason for existing, no justification except within its own territory. The nature of the interest the defense of which these measures have as purpose to insure, assigns to them limits in space. *This interest is the interest of a country;* it is a local interest;
2912 local must also be the sphere of their observance: *claudantur territorio.* A foreign State, which has not the same interest to protect, and whose own interests are perhaps diametrically opposite, cannot be held, by virtue of International Comity, to give its support to the laws of police and safety decreed by another State, the aid of its magistrates and of its agents; it need not make itself the executor of their strict, exceptional decisions, sometimes even contrary to equity and to natural right: it would be bold to expect such a service, such an abdication. And the authors of

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the Civil Code had so well understood this, that they formally restricted to "those living within the territory," the application of the French laws of police and safety, thus exempting from their observance all those, even the Frenchmen themselves, who live away from our country.

The French Court of Cassation has from the first day of the promulgation of the code, paid one of the most remarkable homages to this principle, when it decided, on the one hand, by its decree of January 7, 2914
1806 (Sirey Chron. vol. II, 1, 202) that the forfeitures pronounced against the emigrants by the revolutionary legislation could not affect them in a foreign land in the exercise of their rights, notably in the right to having a legal status and that hence nothing was opposed to having the judgments rendered against them outside of France, from being there executed, on the other hand, by its decree of January 26, 1807, (Sirey Chron. Vol. II, 1, 339) that, notwithstanding the civil death which had been imposed upon him in 2915
his native country, an emigrant Frenchman deceased in a foreign land before the amnesty, had validly transferred his estate, with the title of heirs, to his children; this certainly means that with regard to France herself, and the tribunals which give justice in her name, the laws of exception which she made from a police and safety viewpoint have no action over the person and properties of its citizens in foreign countries. And, when in the superior interest of morality, to which no State can remain indifferent, 2916
the French law of June 27, 1866, considered it necessary to extend to the infractions committed by one under its jurisdiction, *in a foreign country*, the prosecution and the repression which he would have incurred by reason of a similar act prepetrated on French soil, it takes good care not to appeal to foreign justice; it is in France only, and by French judges only, that the guilty Frenchman will be punished; and, what is more, when the infraction belongs to the category of *crimes*, its author can not be prosecuted after

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his return to France, unless this infraction is punishable by the foreign law as well as by the French law; it is impossible to push scruples and the respect for the sovereignty of other States any farther: France does not adjudge to itself the right to cause the foreign authorities to intervene in the application of its laws of police and safety, in the very exceptional cases where it deemed it necessary to keep its emigrants under the empire of their provisions. Let us say further, even if
2918 France had the singular pretention to associate to it a foreign State in the strict observation of its laws of police and safety and to obtain the cooperation of the tribunals of this State, this pretension would almost infallibly be wrecked by local resistances. The public order of a foreign State would not accommodate itself, there is no doubt, to the forfeitures or incapacity pronounced against anyone of our citizens by reason of his affiliation with a religious order or to a measure of political proscription, no more than should the French
2919 tribunals, in our opinion, consider the loss of civic rights incurred by a stranger in his native land, by reason of his color, his cult, of the civil death to which he was condemned (Aubry and Rau, Vol. I, 5th edition, paragraph 31, p. 153; Laurent, *International Civil Law*, Vol. 6, p. 320 *et seq.*; Despagnet, *Summary of Private International Law*, 3d edition, No. 255, p. 516; Surville and Arthuys, opcit, 4th edition, p. 321; A. Weiss, *Theoretical and Practical Treaties on Private International Law*,
2920 Vol. III, p. 382; Wharton, *Conflict of Laws*, paragraph 106; Storey, paragraph 104).

English jurisprudence does not limit itself to this; it refuses to admit that a *penal* condemnation whatever it may be, even regularly pronounced in a foreign land, by competent judges, can affect the property which the condemned party possesses in England: "It is a general principle, we read, in an interesting decision, that the penal laws of one country cannot be taken into consideration in another" (Ogden v. Folliott). "I would go still further, said Lord Laugh-

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DOROUGH in the same case and declare that the penal law of no other country can have as consequence the withdrawal from an individual of the right to recover a certain property in our land. *The penal laws of foreign countries are strictly territorial and govern only what they can reach and seize by virtue of their authority.* A fugitive who passes into this country comes there with all the rights attached to his person (*transitory rights*), he can recover money deposited to his account, landed property, bonds, etc., he cannot here 2922
be made to feel the prosecution instituted against him in the country which he just left, and at the frontiers of which it forcibly ceases." (Folliott vs. Ogden, I H. Blackstone's Reports, 123, 135 ; Dicey and Stocquart, *The English Personal Statute*, vol. 1, p. 321).

In recapitulating, the French laws of police and safety provide as a general matter for the French territory only ; if their observation is imposed upon all those, Frenchmen or foreigners, who inhabit this territory (Civil Code, article 3, paragraph 1), they are only 2923
exceptionally obligatory to the French who are in foreign lands, and only if the legislator manifested the desire to subject them thereto. And even then, the foreign tribunals cannot accord them any effect within the province of their territorial competency, when there must result therefrom an interference with the local public order : such an interference always results, in the view of English jurists, from the *penal* character attached to the disposition invoked. 2924

II.

The religious congregations have, at all epochs of our history, been the object of diffidence of the public powers. At all periods and under all governments, under more or less severe forms, special measures were taken, for the purpose of preventing them from becoming too powerful, from accumulating excessive riches, from escaping the surveillance and the control

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of the State. The political character of these measures was very clearly set forth by Mr. Trouillot, in the report which he presented to the Chamber of Deputies, on the project of law relative to the Association Contract, in the sitting of June 8, 1900: "All the forms of government, the old France as well as the France of the revolution did not cease to guard against the perils of a social and economical order which result from the excessive development of congre-
2926 gations. At all periods, mistaken ideas may have been entertained on the efficacy of the measures taken; there was never any mistake as to the necessity of protecting both persons and properties against a formidable capacity of absorption. The congregational associations do not propose to give, by grouping together, more force to individual activity, and thus draw therefrom a larger benefit for the general interest. They tend, on the contrary, to annihilate the individual, to destroy his will force and his
2927 initiative, to curb him under an absolute authority, before which even the human personality is effaced; as to their material power, increased daily by the resources taken from families by the exploitation of conscience, by superstitious hopes or fears, they but threaten the public treasury with indefinite poverty; in fact, the properties fallen into their possession are withdrawn from commerce and circulation. * * *" These reasons give a perfect account of the attitude observed by the French Revolution to-
2928 ward religious associations, and of the successive laws which, since the dispersion of ecclesiastical properties in 1789, have come, once to forbid in an absolute manner, then to subordinate to the strict condition of a governmental or legislative authorization, the existence of congregations; they are also again found as the basis of the distinctions established by the law of July 1, 1901, between congregations and ordinary associations; the speakers, who in the two chambers, have taken up the defense of this distinction, Mess. Waldeck-Rousseau, Viviani, Brisson, Pelletan, in the Cham-

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ber of Deputies, Mess. Valle and Maxime Lecomte, in the Senate, made the effort of their argument bear on this point: it is in the name and in the interest of civil society, of the lay State, menaced by the extension of the congregational power and fortune, that the leaders of the republican party petitioned Parliament to adopt the plan submitted to its consideration. This appeal was heard: the law of July 1, 1901, was voted.

By the terms of article 13 of the new law "no religious congregation may form without authorization given by a law which will determine the conditions of its operation," and article 18 adds that the existing congregations to which the authorization will have have been refused are considered dissolved of right, and a receiver appointed by the Tribunal and invested with all the powers of a sequestrator-administrator whose duty it is to proceed with the liquidation of the properties held by it. Strict punishments are pronounced by article 8, paragraph 2, and 16, against any person who has formed part of a non-authorized congregation.

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If we compare the situation made for the religious congregations by the law of 1901, and the condition in which the ordinary associations are henceforth placed, we see at once that an abyss separates them. The ordinary associations form *freely*, without previous authorization or declaration (article 2); the so much expected and so often promised freedom is at last given them; articles 291 and those following of the Penal Code, which subordinated to the agreement of the government the formation of any association of more than twenty persons, and which severely repressed any contravention, are abrogated (article 21). On the other hand, the congregations lose the benefit of the tolerance which they had enjoyed for so many years. Not content with refusing them legal existence and legal personality, under the conditions under which he accords them to other associations, the legislator of 1901 pronounces the dissolution of those,

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2933 which have not obtained the legislative authorization which he declares necessary :—an authorization which however is quite illusionary, since as a matter of fact, all applications of congregations were systematically laid aside by the Chamber,—he orders the liquidation of their properties ; he makes it a crime not to have broken every tie of obedience with the dissolved congregation.

2934 The law of July 1, 1901, is therefore a *law of exception ;* it puts the congregation and congregationalists beyond the common law ; and this placement beyond the common law can be explained only by considerations of a political order, absolutely foreign to the interest of the persons to which it applies ; the law which establishes it is a law of social safeguard and protection ; its avowed purpose, its only purpose was to break the power of congregations, of preventing the accumulation in their hands of property of a considerable value. And it is to effect this

2935 purpose, that under the pretense of liquidation, it has decreed the *expropriation* of the dissolved congregations ; that it has deprived them of their secular patrimony, treated as *res nullius.* On the other hand, with a view to insuring to its prohibitions an energetic sanction, it creates new misdemeanors and new punishments ; it is not only a law of *exception,* a law of expropriation ; it is also in the first place, a *penal law.*

2936 No doubt can therefore arise as to the character and the extent of application of the rules which the law of July 1, 1901, has consecrated to religious congregations ; it is impossible not to see therein the " laws of police and safety," in the meaning of article 3, paragraph 1 of the Civil Code ; they are such by the political interest, to satisfy which is their exclusive purpose ; they are such, by the exceptional measures derogatory to common law, contrary to the interests of individuals, to which they had recourse for this purpose ; their action is naturally limited to French territory.

We have furthermore, in this respect, a particularly

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authoritative testimony; it is that of the reporter himself of the law of 1901 of the Chamber of Deputies. Mess. Trouillot and Chapsal, in their excellent commentary of the laws on associations say clearly, that this law is a law of *police and safety;* and that on this ground it applies to Frenchmen as well as to foreigners *within the total limit of the territories where French sovereignty is exercised* (*New laws*, 1902, 1, 205), which implies without doubt that foreign territories escape its authority. We have better. The law of July 1, 2938
1901, does not even apply to all the territories where French sovereignty is exercised. Our colonial possessions, other than Algeria, are not unless by a special decision of the Chief of the State, subject to its observation. The Minister of Colonies, Mr. Decrais, declared this formally in the Chamber, in the sitting of March 29, 1901, making known the motives of this exception: "For reasons of a political and diplomatic order, the government thinks," said the Minister, "that, under the present condition of things, 2939
the law can not be applied to the colonies, to our recent possessions in Oceania, of Asia, of Africa, where not only we must take into account international conventions, such as the act of Berlin, but where the religious situation is not regulated by any kind of concordat" (Official Journal, 1901, Chamber of Deputies, p. 1,033). The law of 1901 is therefore restricted, unless by special promulgation, to the territory of the metropolis; it is not a colonial exportation law; it is considered that the development of the congregations 2940
in the colonies does not cause the State to run the same risks as in continental France; their political action, the increase of their fortune have seemed less formidable there.

But, if it is thus in territories which, after all, are French territories, to which French sovereignty and French legislation extend their empire, for a stronger reason, the new law had to leave out of its domain of application foreign countries, such as England, Germany, the United States, etc.

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What, in fact, does the reconstitution beyond its frontiers matter to France of congregations which it dissolved in its own land, because they seemed dangerous to it? What matters to it the formation in a foreign land of non-alienable properties, the existence of which cannot annoy it in the least? By pretending to pursue to the ends of the earth the exiled monks and take from them the means of living in a congregational state even in a foreign land, it would have com-
2942 mitted without right, without interest, a veritable abuse of legislative power; and the foreign courts would not fail to protest against such an action.

This abuse can not be reproached to the authors of the law of 1901; they did not desire to reach the congregations outside of France, no more so than they wanted to reach them in the colonies; nothing in the preparatory work, nothing in the discussion betrays such ambitious views. And the French courts themselves, every time the question has been raised at their
2943 bar, did not fail to proclaim the strictly *national* and *territorial* character of the new law.

Two especially interesting decisions must be recalled here; both were delivered by the Civil Court of Grenoble, in regard to the Congregation of the Chartreux; both bear the date of July 2, 1904, and have to-day been affirmed by the courts of last resort.

The first one was given under the following circumstances:

Two monks, the one of French origin, the other of
2944 Swiss nationality, belonging to the Order of the Chartreux, had been put into the hospital of Saint-Jean-de Dieu, by Chartreux brothers; either Frenchmen, or foreigners. The director of this establishment having demanded of Mr. Lecouturier, receiver of the Congregation of the Chartreux, the costs of treatment, the court refused, upon the conclusions set forth by the receiver, to grant the claim made against him, and these are the reasons on which the decision is based:

"In view of the fact that Frossard and Clement, the two congregationalists treated at St. Jean de Dieu,

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were placed there, the former, a *Swiss subject*, by the Prior of Chartreuse de Valsainte (France), the second, *although of French origin*, by the Prior of Chartreuse de Cervera (Italy).

"*In view of the fact that the law of 1901 does not control property or persons in a foreign land*, and that it has not been able to establish any connection between the congregation residing in France and the congregations residing outside of the territory; that the Father General even assuming 2946
engagements for Chartreux who are not French, or who are in convents outside of France, could not create a debt of the congregation, which would be paid from the properties subject to liquidation in France; that the sums demanded on account of Frossard and of Clement must therefore be rejected," etc.

What does this mean to say, if it is not that the dissolution of the Congregation of Chartreux in France did not, in any manner, affect the establishments of the same order having their seat and their residence in 2947
a foreign land; that the *properties belonging to the Chartreux in foreign lands* have remained out of the liquidation decreed by virtue of the law of 1901? If it were otherwise, the receiver could not have been relieved from the outlay made in France in the interest of foreign Chartreux; claiming the *entire* assets of the congregation, even in those parts which are outside of France, he would evidently have to take into account the *entire* liabilities incumbent thereon, whatever the origin might be. The territorial character of the law 2948
of 1901 and of the measures which were the consequence thereof is thus formally affirmed by the judges of Grenoble.

The second decision they rendered, under date of July 2, 1904, is still more significant:

A Chartreux father, M. Bioret, who before the expulsion, resided in the Convent of the Grande Chartreuse, having claimed, in conformity with article 18 of the law of July 1, 1901, the contributions he had made to the congregation, upon his entry into religion, the

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receiver had objected that such a demand could not be received, as its author had preserved, *in a foreign land, it is true*, his quality of Chartreux, and that the restitution of his contributions to a member of a dissolved congregation, who had remained a congregationalist outside of France, would go directly against the desire of the law, by reconstituting the patrimony of this congregation.

The Court rendered good and complete justice to
2950 such an argument:

"In view of the fact," it says, "that the legislator did not impose upon the restitution of the contributions this condition, that the claimant should cease to be a congregationalist even in foreign lands; that in pronouncing by law the dissolution of non-authorized congregations, the legislator wanted to disperse the persons and properties in France, and that this result is obtained when the persons have passed the frontier and when a receiver has seized the properties; *that the law of 1901*
2951 *does not control either the properties or persons outside the territory.* . . . .

"That once the dissolution obtained, it did not make it his preoccupation as to what might become of the members of the congregation, to whom a familiar patrimony should be restored, and did not impose upon them the obligations, as a condition of this restitution, not to maintain in foreign lands the quality of congregationalist, which the French law need not be cognizant of, and which they can moreover freely and at any
2952 moment renounce."

This is certainly a recognition that the law of 1901 stops at the frontier of our country, that its prohibitions do not follow those of our nationality to foreign territory, where they took refuge, and that the persistance among them of the congregational state *in this territory* does not carry with it, to their detriment, even in regard to French justice, any forfeiture; the rigor of the law would only affect them if they had remained congregationalists *in France*.

It is useless, we believe, to insist further. From

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the avowal of its authors, from the motives which inspired it, from the judicial opinions which interpreted it up to the present time, it follows with absolute certainty *that the law of July 1, 1901, which established the law of religious congregations in France on new bases, is a law of police and safety*, and that, upon this ground, its action is limited to persons and properties on French territory.

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III.

In consequence of the refusal of the authorization which the Chamber of Deputies voted against it, in its sitting of March 26, 1903, the Order of the Chartreux, the principal branch of which was the Grande Chartreuse near Grenoble, was considered dissolved of right, counting from the said date, by application of article 18, paragraph 2 of the law of July 1, 1901.

And, in conformity with paragraph 3 of the same 2955
article, Mr. Lecouturier, Judiciary Aministrator of the Tribunal of the Seine, was appointed, by judgment of the Civil Tribunal of Grenoble delivered March 31, 1903, upon request of the Procurator of the Republic, sequestrator-administrator and receiver of the properties of the dissolved congregation, "*as well of the properties located and held at the parent house at St. Peter of Chartreuse, as of those held by the said congregation in its different establishments*," etc. * * *

In reliance upon the mandate he had received, Mr. 2956
Lecouturier at once declared his intention of taking possession as well of the cordial factory, located in the neighborhood of the Grande Chartreuse, at Fourvoirie, as of the trade marks exploited there. The Abbe Rey, holder of these marks resisted, alleging that they were his personal property, as also the commercial holding itself. But the Civil Tribunal of Grenoble refuted this, by its decision of April 23, 1904, confirmed on appeal, under date of July 19, 1905. This judgment decides that "the commercial holdings

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of the manufacturers of cordials, elixirs and other products, exploited at the Grande Chartreuse as well as at Fourvoirie, under the commercial name of 'elixir of the Grande Chartreuse,' 'products of the Grande Chartreuse,' comprising the customers and stock on hand, *the property of the trade marks and commercial names serving to distinguish these products*, as also the model of the bottles, flasks, boxes and cases serving to contain them, the exclusive right to the industrial and
2958 commercial use of the name of L. Garnier, the furniture, the utensils of all kinds, serving in the exploitation of the merchandise, first materials, manufactured products, in storage, cellars and agencies, and all other appurtenances and dependencies generally of whatever kind of the said holdings * * * are in reality the property of the Congregation of the Chartreux, the deed of sale of November 20, 1897, being void as regards Rey, a member of the Congregation, whom the receiver has established by serious, precise and con-
2959 cording proofs, to be the representative of the Chartreux"; in consequence "*that the said commercial holding with all its accessories*, COMPRISING THEREIN THE TRADE MARK *is property held by the congregation within the terms of article 18, paragraph 3 of the law of July 1, 1901, and forms part of the assets to be liquidated.*

Strong in this judgment, and without waiting for the decision of the court which affirmed it on appeal, the receiver obtained from the President of the Civil Tribunal of Grenoble, before whom the matter was
2960 brought as urgent, an order authorizing him, by a provisional and urgent measure and without damage to the holding, to put himself into effective possession of the works at Fourvoirie, as also of the commercial establishment operated there, together with its dependencies: this order bears date as of May 17, 1904. Mr. Lecouturier hastened to carry it into effect, by beginning *on French territory*, the exploitation of the marks registered in the name of Abbe Rey; for this purpose, he entrusted to the Cusenier distillery the manufacture of the cordial, and made a contract with the

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said distillery under the terms of which it can sell *in France and under these marks*, the cordial thus manufactured.

The national market thus opened did not seem sufficient to the receiver. Desirous of extending the exploitation of the new products to foreign countries, everywhere where the products of the manufacture of the Chartreux have acquired a deserved reputation, the Cusenier firm expedited to different countries, especially into England, the United States, Switzer- 2962
land, the Argentine Republic, cordials coming from the Fourvoirie works, under cover of the Rey marks. These cordials were seized at the request of the Abbe Rey, and suits were brought in the countries above indicated, with a view to stopping the receiver and his legal representatives from exploiting the Chartreuse marks within their territories.

It is then that the receiver petitioned the judge in the proceedings at Grenoble to issue a new order, authorizing him to have delivered to himself the mer- 2963
chandise seized in foreign lands, and to have transferred to his name the *foreign* trade marks registered in the name of the Abbe Rey. This order issued under date of February 15, 1905. It affirms the right of the receiver in these terms:

"In view of the fact that Lecouturier has all the powers of a temporary administrator of the commercial holdings, that he is authorized and that he has the duty of managing these holdings for the benefit of the interests of those entitled thereto; that he is qualified 2964
to make use of all the trade marks, commercial names and other emblems which the Chartreux held and used to designate the products of the factory, he must see that the commercial marks which are the most important accessory of the commercial holdings, be not imitated or fall into the public domain, and that the rights attached thereto be preserved by all assignments and renewals necessary in all countries; that he has the right to demand that these assignments be made in his name, in his quality of receiver and sequestrator-

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administrator of the congregation, by his care, at the end of his receivership, to have them transferred or renewed in the name of the party who will be finally adjudged proprietor of the said holdings, or of the buyer of these holdings in case of a public sale;

"That Rey took care to have the marks registered in foreign lands assigned in his name, after the sale to him of the commercial holdings agreed upon by Grezier in November, 1897, an act which by judgment of April
2966 23, 1904, was pronounced fictitious;

"That this decision involves for Lecouturier, the representative of the congregation, the real owner, the duty of making the assignments and renewals urgent, as had done Abbe Rey himself, so as to allow him to exploit the commercial holdings which he is held to administrate, *under the conditions, under which, under the name of Rey, the Chartreux were authorized to do so,* SUBJECT TO THE CONTROL OF THE LAWS OF EACH COUNTRY.

2967 "That, notwithstanding, a certain number of cases of cordial sent by Lecouturier, in his quality, into England had been held up at the English customs, for the reason that the products in question were provided with labels bearing false indications of their origin; that this seizure and prohibition do serious injury to the commercial exploitation carried on by Lecouturier, in his quality, in the interest of the proper party; that it is right therefore to authorize him to take all necessary steps to cause these troubles to cease and to
2968 take possession of the confiscated merchandise, in order to sell them in England, *leaving to foreign jurisdiction to establish the difficulties which may be produced in this respect by a legislation differing from the French legislation.*

"For these reasons, we say, by extension of the powers precedingly conferred upon him, by the order of May 17, 1904, Lecouturier, in his quality, has power, as sequestrator-administrator charged with the liquidation of the properties of the Congregation of the Chartreux now dissolved, to take all steps and pursue all

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proceedings tending toward the assignment and registration in his name of the trade marks previously registered in foreign lands, specially in England and the United States of America * * * he, upon expiration of his functions, to cause them to be assigned or renewed in the name of the party definitely adjudged proprietor of the commercial holdings in question, or of the buyer in the case of a public sale.

"Let us say that he has likewise the power to take delivery of all the cases of merchandise addressed by 2970
him to England and held by the Customs Commissioner of His British Majesty, as also to renew all the trade marks in the countries where they may expire, *leaving the questions which may be raised in this respect to be decided by the competent courts.*"

From the decisions of the French Courts, reported or analysed above, it thus follows :

1. that the Abbe Rey is the person representing the Order of the Chartreux, today dissolved in France, and that consequently the trade marks registered in his 2971
name, being in reality the property of the Order of the Chartreux, must revert to the receiver of the properties of this Order;

2. that the receiver has, not only in France, but *even in foreign countries*, the right to exploit the said marks, to have them transferred or renewed in his name.

We need not here consider the value of the first of these two affirmations. Let us admit that under the name of the Abbe Rey, the Order of the Char- 2972
treux is the actual proprietor of the marks which distinguish the products of its manufacture; let us admit, since the Court of Grenoble has thus decided, that the Abbe Rey is a substitute.

Does it follow that the marks registered in his name *outside of France* may be claimed and exploited by the receiver as being comprised among the properties of the dissolved congregation, the administration of which is confided to him?

Such a pretention is entirely inadmissible.

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It is necessary to first observe to what extent it injures common sense and equity? If the good will of the public has, for a long time, been acquired in all lands for the products of the manufacture of the Chartreux, it is not by reason of the place where this manufacture has hitherto been carried out, but by reason of the industrial process put into operation there, and the secret of which the brothers have carried into exile. The receiver can have manufactured at the works of
2974 Fourvoirie whatever cordial he pleases by the Cusenier distillery; this cordial will not be the one formerly manufactured by the Chartreux in the same plant, and which they continue to manufacture, since their expulsion, in the Spanish plant at Tarragone. The court of Grenoble itself could not do otherwise than find, in its decision of May 18, 1905, given in the action for infringement, brought by the receiver against the *Union Agricola* which sells, in France, under new marks, the cordial manufactured by the Chartreux Fathers at Tar-
2975 ragone; this decision declares that, if in the application of the law of 1901, the mark of the Grande Chartreuse could remain in possession of the receiver of the disbanded congregation, this mark covers very different products from those it formerly identified, since "*the secrets and processes of manufacture were carried away by the Chartreux as a non-seizable property, since non-patented processes remain unknown, and since thus the mark is separated from the product the origin of which it had hitherto guaranteed.*" This declaration has its
2976 value; it shows that the Chartreuse of the receiver has nothing of the Chartreuse of Chartreux, and that the exploitation by Mr. Lecouturier of the mark registered by the Abbe Rey would expose the public, in foreign lands, to serious errors by deluding it as to the products individualized by this deceptive mark.

Foreign magistrates could not, by upholding the pretention of the receiver, sanction and overlook such a fraud.

But on a strictly judicial basis, the thesis upheld by Mr. Lecouturier is not supported any better.

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The law of July 1, 1901, by virtue of which the Congregation of the Chartreux was dissolved and put into liquidation, is, we have demonstrated it, a law of police and safety which, as such, can only reach people and properties *located in France.*

In order to be successful in upholding his claim, the receiver must first establish that the marks registered *in foreign lands* constitute as regards the congregation, in the right of which he claims to be the substitute, *a property located in France*, subject by this location to 2978 the action of the French law.

Vainly would Mr. Lecouturier search for a basis for this impossible claim, as to the pretended indivisibility existing between the marks exploited in foreign lands in the name of Mr. Rey, and the commercial holding, possession of which was given him in France after the dispersion of the brothers.

Vainly would he allege that this holding being in French territory, *the marks, even the foreign ones*, which form an accessory thereto, take from it their location 2979 and hence constitute *French property*, subject to the application of the law of 1901.

It would be permissible in the first place to ask whether the commercial holding, which had its seat at the plant of Fourvoirie, could as a property held in France by the congregation or in its name, be put into liquidation. This establishment had for its purpose the manufacture, according to certain formulæ and according to certain processes, which have remained out of the public domain, as also the sale of cordials un- 2980 unknown to and appreciated by the public. In passing the frontier, in transferring to a foreign land the seat of its manufacture and its secrets, the Abbe Rey did he not also by this very act transfer the commercial holdings themselves, principal and accessories? And Mr. Lecouturier not being informed of the processes and secrets which had made the success of the Chartreuse and it being consequently impossible for him to continue the same manufacture, could he acquire anything else than the material fragments of the

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vanished holding: an individual plant, first materials, goods in stock? The commercial holding of the Abbe Rey is no longer at the Grande Chartreuse; it is there where the cordials are manufactured in conformity with the formula of which the Chartreux Fathers are the sole retainers. Mr. Lecouturier could utilize the buildings and the material left at his disposal, for a similar purpose; he could with the aid of the Cusenier distillery create a new commercial establishment; but this com-
2982 mercial holding has in common but the frame of the one the place of which it has taken, since the products it puts on sale are essentially different. If this is so, by what right would the receiver claim, *under the title of accessories*, the marks depending on an establishment to the exploitation of which he did not succeed, which is not the commercial estalishment of the Chartreux.

The Tribunal and the Court of Grenoble did not stop at these objections; they granted to Mr. Lecouturier
2983 the right to put himself in possession of the commercial holdings exploited by the Abbe Rey, whom they declare to be a substitute of the Chartreux brothers, with all its accessories, *including therein the* trade mark. But a similar decision, admitting that it be founded in law, which the Court of Cassation will have to judge, can have no effect on the property of the marks registered in foreign countries.

There does not exist, let us observe it right here, so as not to have to revert to it again, any sort of neces-
2984 sary dependency between the marks registered in France and those filed in foreign countries, relative to this same product.

Each one of these marks constitutes a distinct property for the country in which it complies with the legal prescriptions, and is based on special rules and conditions; each one may have its own destination. Certain foreign laws declare that the mark cannot be assigned without the commercial establishment where it is utilized; this system, which is that of the English *good will*, means only to say that in reality there are

as many commercial establishments as there are different countries where the mark has been registered; and it is very easily conceived that it is not possible to assign for example the English mark without the English clientele: *but the marks of every country, as marks, are none the less independent of each other.* They are not any the less independent of the commercial establishment which exploits them. 2985

It is true that the jurisprudence decides that the *sale* of a commercial establishment virtually comprises the mark, which exteriorizes the products: but, why is it thus? because such was, in all probability, the will of the parties; the presumption is that there was assignment at once of the commercial establishment and assignment of the mark: "The law," very justly says Mr. Bedarride (*Commentary of the laws on patents of invention, names of manufacturers and on trade marks, No. 874*), "could not show itself any more jealous of the reputation of a manufacturer or of a merchant than this merchant or this manufacturer himself. *It could only give him the means to safeguard the reputation which he acquired, against ignorance, abuse, or frauds of its successor. This means, it assured by the absolute liberty it leaves to the stipulations of the assignments and by the faculty of modifying, of limiting and even forbidding to the assignee the right to use the name and the mark.* If the assignor does not make use of the remedy which is granted him, it is because it is to his interest to abstain therefrom. It is evident, in fact, that the interdiction to use the mark or the obligation to modify it would greatly influence the determination of the price. If therefore, *voluntarily* closing his eyes to the inconveniences which the assignment pure and simple may present, he stipulated and received the highest price, where would be the propriety and the justice of protecting him against the inconveniences and to exonerate him from the law which he himself has dictated? Thus the assignee has the right to use the mark, even nominal, which designates the establishment he has 2986 2987 2988

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acquired, in the same manner as did the assignor, without restriction, without modifications other than those expressly imposed upon him by the deed of sale and assignment." See also Rende, *Treatise on Marks of Manufacture and Commerce and on Unloyal Competition, No. 100;* Blanc, *Treatise on Infringement*, p. 723; Pouillet, *Treatise on Marks of Manufacture and Unloyal Competition*, 4th edition, 1898, No. 98, p. 140.

The tie which connects the trade mark with the com-
2990 mercial establishment is therefore purely artificial and voluntary; it is a result of a tacit agreement, of a presumption of will. And this presumption, a contrary desire, formally expressed, would cause it to disappear, restoring to the establishment and to the mark, their independence relative to each other. The merchant who sells his establishment has thus the right to reserve for himself, by a special stipulation, the personal use of the mark. (Commercial Tribunal of the Seine, May 24, 1884; *Annals of Industrial Property*, 1890,
2991 288; *Pand. fr. Rep. No. Trade Marks*, No. 490.) And such a reserve may even be understood and follow from the circumstances. It would especially be thus, when the seller of the commercial establishment is and intends to remain manufacturer; it is natural, in fact, that in keeping his factory, he at the same time keeps the mark which designates the objects of his manufacture, and does not assign this mark to cover products of an industry other than his own. (Lebre, *Theoretical and Practical Treatise on Business Estab-*
2992 *lishments*, No. 67; Commercial Tribunal of the Seine, May 24, 1884; *Annals of Industrial Property*, 1890, p. 288 aforecited).

Such is also the case with a commercial holding put into a stock company, when, on the one hand, the deed of transfer contained an enumeration of the conveyances, and a detailed statement of the material, without any mention of the mark, and that, on the other hand, the purpose clearly defined of the company was the exploitation of products other than those for which the mark had been filed. (Paris, July

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9, 1890; *Annals of Industrial Property*, 1893, p. 352). A business establishment is not therefore, as an inheritance, a universality in law; an indivisible whole: "It is a universality in deed or reunion of corporal or non-corporal objects united by the purpose for which they are intended, *but capable nevertheless of being separated from one another.*" (Lyons, Caen & Renault, *Treatise on Commercial Law*, 3d edition, vol. II., No. 245 bis, p. 182). And it is upon the will of the parties that it is incumbent to remove, to separate 2994 that which the assignor intends to cede and what he intends to keep, of the parts of which the business holding is composed.

But what will happen, if it is no longer in sequence of a voluntary assignment, but by virtue of an act of public power, of an *expropriation*, that the business establishment passes into other hands? This *forced transmission*, will it carry with it, in the absence of any reservation, the grant to the expropriating party or its representatives, of the mark which, 2995 hitherto, had been part in the exploitation of the establishment?

The question was carried before the French tribunals, some twenty-five years ago, under circumstances which should be recalled:

A law of August 2, 1872, had, in granting to the State the monopoly of the purchase, sale and manufacture of chemical matches, pronounced the expropriation, by payment of an indemnity, of the factories then existing. The Compagnie Generale des Alumettes, 2996 the assignee of this monopoly, put forth the pretension of using, not only in France, *but also in foreign countries*, the names and marks of the former dispossessed manufacturers, holding that they were implicitly comprised in the forced assignment of which it was the beneficiary, and that such a cession should have exactly the effects as a voluntary sale. The Court of Paris, in the first instance, by its decree of February 24, 1880, the Chamber of Petitions of the Court of Cassation then, by a rejecting decision of November 8 of the same year

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(Sirey, 1882, i. 9; *Annals of Industrial Property*, 1880, p. 156; 1881, p. 280) have condemned this strange theory, by considerations of fact and of law to which there is no rejoinder:

"If the law of 1872, says the Court of Paris, granted exclusively to the State, *within the entire extent of the territory of the Republic*, the purchase, the manufacture and the sale of chemical matches, and if, in consequence, it disposed, in its article 3, that proceedings
2998 should be taken toward the expropriation of the factories existing at present, this *expropriation*, which after all is but the dispossession of simple individuals from the right of manufacturing and of selling chemical matches on French territory, *was necessarily limited in fact and in law to what was strictly indispensable for the constitution and the exercise of the new monopoly*, whether the State, as it was authorized thereto, exploited it directly by its agents, or whether it conceded it to a private enterprise, such as the Compagnie Gen-
2999 erale des Alumettes: the expropriations effected in the name of the State and the corresponding indemnities paid therefor, according to the terms and the object itself of the law, bore only on the factories, that is to say on that which constituted the industrial and commercial establishments of manufacture and sale; in so far that their exploitation is henceforth absolutely forbidden within the full extent of the territory.

"The monopoly thus established, sufficing unto itself, the State as operator or the company, its repre-
3000 sentative, had neither interest, nor right to deprive the manufacturers of their names and trade marks in order to make them their own. * * * *The expropriation of the factories thus made with a view to a monopoly, could not, as to its object and its results, be compared to a voluntary assignment which would be made in a private interest, without exception or reserve, of a commercial or industrial establishment. As the monopoly had to restrict itself within the limits of French territory, the manufacture and sale of chemical matches in all lands, outside of France, have remained*

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as before under the protection of industrial and commercial liberty; the expropriated manufacturers thus had the right and interest to reserve, with a view to the industry which they might transport to foreign lands, the property and use of their marks of manufacture and commercial names, whilst the French State, or the licensed company could not invoke the privilege of the monopoly so as to comprise them in the expropriations of the factories."

The Court observes moreover that the restrictive 3002
interpretation which should, according to it, be given to the expropriation law of 1872, is that of the administration itself. The Compagnie Generale des Alumettes having represented to the Minister of Finances by letters of March 28, 1873, that it seemed to it indispensable that, in the expropriations which were going to occur, the State be expressly recognized as owner of the trade designs and marks of the factories, the Minister, who was then Mr. Leon Say, answered on April 22 following, that: "*As concerns* 3003
the trade marks, it appeared to him to constitute a commercial property which could be exploited, not only in France, but also in foreign lands, and that the State could not appropriate it except in its own territory, adding that the foreign market must entirely escape its action and remain open to all companies which were expropriated in consequence of the establishment of the monopoly."

And later, in a second letter of May 9, 1873, the
Compagnie Generale having renewed its pretentions 3004
and affirmed in support thereof, that it had received the formal assurance that the State meant to express in the expropriation acts, that the complete ownership of the trade marks was obtained for it, and *to forbid the use thereof to the expropriated parties, as well in France as in foreign lands*, Mr. Magne, who had succeeded Mr. Leon Say as Minister of Finances, explained in his turn in his answer of June 16 following that "if he thought as did the Company that the law of August 2, 1872, had made it impossible for the hold-

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ers of the trade marks to make use thereof in France, *this law and the conditions had not destroyed the faculty possessed by the manufacturers to avail themselves thereof in foreign lands: that finally, from a point of view of law and equity, the State could not or should not insist upon the cession of the trade marks of the factories of chemical matches.*"

The Court of Cassation, in which a petition was filed against this important decision, pronounced itself in
3006 its turn, by a strongly supported decision, against the claims of the Compagnie Generale des Alumettes.

All should be cited of this decision of November 8, 1880:

"In consideration," it is said there, "that the law of August 2, 1872, articles 1 and 3, in attributing to the State the monopoly of the purchase, sale and manufacture of chemical matches, has pronounced the expropriation of the factories existing at present; that these limiting expressions show sufficiently that the
3007 principle and the effects of the expropriation do not extend beyond what constitutes the establishments of manufacture properly said, that is to say the buildings, material and machinery serving in that exploitation; that in this essentially fiscal matter it is not possible to apply, by analogy, the same dispositions to the industry itself and to the distinctive marks which are the natural accessory thereof;

"In consideration that, if indemnities have been granted to the manufacturers dispossessed from the
3008 right to exercise their industry on territory of the French Republic, the payment of these indemnities does not imply, on this account, any assignment of rights to the profit of the State or of the assignee Company; *that the manufacturers have preserved, after as before, their commercial personality, and that, masters to carry their establishments to foreign countries, they, at the same time, retained the exclusive property of the exterior signs which indicate their products:*

"In consideration that it follows from this that, in

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refusing to the applicant Company the right to make use of the marks and commercial names of manufacturers expropriated by the law of August 2, 1872, the decree attached has made a just application of the rules of the case.—Rejects, etc. * * *."

Perhaps objection could have been made to the doctrine of the decrees of 1880 that there certainly was in the expropriation suffered by the manufacturers of matches, in consequence of the establishment of the monopoly, an actual *sale*, a forced sale, but a sale the 3010
price of which had been paid them in the form of an indemnity and that, hence they had not, accepting this indemnity, reserved their rights to the exploitation of their marks in foreign lands, they should be considered as having renounced them, at the same time as the manufacture on French soil. From the words of the reporter of the law, in the National Assembly, Mr. Caillaux, it certainly seemed to follow, in fact, that in the estimation of the loss suffered by the manufacturers, which was to serve as the basis for the deter- 3011
mination of the indemnity, figured the losses caused by the total destruction of their industry: "The indemnity, said he, must comprise the price of the building in which the factory is established, the value of the tools, *the contingent value of the deprivation of the industry, taking into consideration the profits it brought*" (Official Journal, August 13, 1872, p. 5510). On the other hand, it is to be noted that, in the memorandum distributed to the jury in the name of the expropriated manufacturers, the same had mentioned as one of the 3012
bases on which the indemnity should be calculated, "The property of the industrial value, the price attached to the assignment of a business establishment, of a clientele, *of a trade mark*, etc. * * *" These arguments exercised no influence whatever on the solution of the litigation; they had to cede to this decisive reasoning that the law of 1872, a fiscal law, and as such of limited application, did not intend to impose upon the manufacturers of matches the assignment pure and simple of their industry to the State;

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their expropriation had for purpose the establishment of a monopoly, of a monopoly on French territory, and to the extent that the establishment of this monopoly rendered necessary. In order that the monopoly of the State might operate, it certainly was indispensable that the manufacturers should cease *in France* to manufacture and sell matches and to there exploit their marks, but it was not so, that they should be deprived of the right to
3014 manufacture, sell, and use their trade marks *in foreign countries*, beyond the limits of the monopoly, nor above all that the State or the Company it had substituted for itself have the faculty of putting onto its products intended for exportation, the names of the former manufacturers.

We have laid great stress on the decrees of 1880, because the principles on which they are based are directly applicable to and manifest in the present difficulty; they absolutely reject the claim of the receiver
3015 of the Congregation of the Chartreux.

If, according to the Court of Cassation, the establishment of a monopoly can not have as consequence to deprive the manufacturers expropriated, by payment of an *indemnity*, except of the commercial holdings strictly necessary to this monopoly, and consequently leaves them the use and free disposal of their marks in foreign countries, for a how much stronger reason can not the deprivation of the marks registered in foreign lands result for the members of the dis-
3016 solved congregations, through the *purely political* measures which dispersed them and chased them off French soil. These measures taken against them do not imply nor disguise any cession, voluntary or forced, of the commercial holdings which they could exploit in France: They were not admitted to their discussion; hence, it is not permissible to attribute to them the intention of maintaining the tie which existed between these establishments and the marks by which were designated the products thereof; it is the contrary presumption which is alone likely: on the other

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hand, they received no indemnity in which could be seen the price of their abandonment. The object freely avowed of the law of July 1, 1901, we cannot repeat it frequently enough, was to destroy the power and political influence of the congregations, to destroy their patrimony in France, in the interest of civil society; the consequence of so exceptional a law cannot go any further than its purpose; now, this purpose is obtained so soon as there are no longer any non-authorized monks on our territory, so soon as there are no longer 3018
any congregational properties; it does not require that the State or the receiver become merchant, distiller, and that he alone may exploit in foreign countries, to the detriment of those whom he dispossessed, the products of this commerce or of this distillery. The moment a law of *expropriation*, proceeding from industrial and fiscal reasons, could not have any effect on the rights which the expropriated manufacturers had to their marks in foreign countries, the law respecting congregations, which is also a law of *expropriation*, dic- 3019
tated by political motives, let us say the word, a law of confiscation, can not have a more extended bearing.

We thus believe to have established that the marks registered in the name of the Abbe Rey outside of France have remained out of the seizure by the receiver, of the property belonging to the Congregation of the Chartreux; they are separate from the business establishment he took possession of; they do not at all form an integral part thereof; they do not constitute properties held by the Chartreux in France, they 3020
are *foreign* properties on which the French law has no hold, no more so than it would have on the other holdings, personal or landed, of which a dissolved congregation were proprietor beyond our frontiers.

We do not doubt, that if the question is submitted in these terms to the French Court of Cassation, that it will decide it contrary to the claims of the receiver; its decree of 1880 is a precedent to its decision.

But, what seems impossible to us, is that a court seated in a foreign land would entertain them for

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a single instant. Disavowed by the French law of 1901 itself, *which provided only for the persons and properties located there*, his claims are in fact not reconcilable from the very start with the rights of territorial sovereignty, since they tend to nothing but to the execution outside of France, by an extension which its authors certainly did not desire, of a *law of exception, a penal law, a law of confiscation.* Foreign magistrates will not be able to lend a hand in such a disposal of
3022 the *foreign* marks, that is to say of properties which, despite their incorporeal nature, have more or less an effective state within the province of their competency, since it is in this province that their proprietors derive advantage thereof.

In doing so, they would act contrary to international public order of which they have the care and protection.

Definitively, the undersigned counsellor believes to have to formulate the following conclusions:

3023 I. The French laws of police and safety are intended to apply only to persons and to properties located in France; and even, when an extra-territorial bearing has been formally attributed to them by the legislator, the tribunals of the other countries can only give them effect in the measure in which the local public order does not suffer any attaint.

II. Such certainly is the character of the law of July 1, 1901, in so far as it regulated the conditions of the religious congregations in France; this law, which is a
3024 *law derogatory to the public right, a penal law, a law of confiscation*, is specially limited to the *properties held* in French territory and by the dissolved congregations; foreign courts cannot in any case be asked to see that it is executed.

III. Specially, the receiver of the Congregation of the Chartreux is poorly advised in claiming outside of France the exploitation of the trade marks registered in foreign countries in the name of Abbe Rey, whom the Court of Grenoble has pronounced the representative of the Chartreux: These marks constitute

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a separate property from the commercial establishment to which they were connected until the dissolution of the Order, and are not comprised in the liquidation of its properties located in France.

(Signed) ANDRÉ WEISS.

Subscribed and sworn to before me this Twenty-seventh day of July, A. D. 1905, at Paris, France.

(Signed) HANSON C. COXE,

Deputy Consul General of the 3026

(SEAL) United States of America at Paris, France.

NEW YORK, October 10, 1905.

I, the undersigned, do hereby declare, under oath, that I made the above translation of the opinion of Mr. André Weiss. My occupation has been that of translator in patent causes for the last thirteen years, during which time I have made a very large number of translations from the French to the English. I believe 3027 the above to be a correct and careful translation.

HERMAN KUSTERER.

CITY OF NEW YORK, } ss. :
County of New York, }

Subscribed and sworn to before me this 10th day of October, 1905.

H. MURRAY LA MONT,

(SEAL) Notary Public, 3028

Kings Co.

Certificate filed in New York Co.

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Complainants' Exhibit 28 (Weiss). Opinion Given by Messrs. Ernest Glasson and Andre Weiss.

The undersigned Jurisconsults:

Ernest Glasson, Senior Member of the Faculty of Law at the Paris University, Professor of Civil Procedure, Member of the French Institute and of the In-
3030 ternational Law Institute,

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Having been consulted on the sense and bearing of two decisions rendered by the First Chamber of the Court of Appeal of Grenoble under dates of December 12th, 1905, and March 27th, 1906,

Are of opinion,

The facts being, such as will be seen hereafter, to
3031 adopt the following resolutions.

FACTS:

Following on the refusal for authorization which the Chamber of Deputies opposed to it, in its sitting of the 26th March, 1903, the Order of the Carthusians, whose principal seat was at the Grande-Chartreuse, near Grenoble, was reputed to be dissolved *de facto*, from said date, by execution of art. 18, paragr. 2 of the
3032 law of the 1st July, relative to the contract of association.

And, conformably to paragr. 3 of the same article, Mr. Lecouturier, Judicial Administrator to the Civil Tribunal of the Seine, has been appointed by an order of the Civil Tribunal of Grenoble, issued on the 31st March, 1903, on demand of the "Procureur de la République" Administrator, Receiver and Liquidator of the dissolved Congregation's property, "*comprising the property situate and held at the seat of the mother house at Saint Pierre de Chartreuse, as well as the*

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property held by said Congregation and its different establishments, etc." * * *

Availing himself of the mandate which he had thus received, Mr. Lecouturier at once put forth the pretension of taking possession, not only of the liqueur factory, situate at Fourvoirie, between the Grande-Chartreuse and Saint Laurent du Pont, but also of the trade marks that were worked there. Abbé Rey, the holder of these marks, resisted, alleging they were his personal property, as well moreover as the business 3034
itself. But the Civil Tribunal of Grenoble decided in favor of the Liquidator, in his decision of the 23rd April, 1904, affirmed on appeal under date 19th July, 1905. This decision holds that "the business of manufacturer of liqueurs, elixirs and other products, worked both at the" Grande Chartreuse and Fourvoirie, under the Commercial firm of "*Liqueur Fabriquee a la Grande Chartreuse*" "*Elixir de la Grande Chartreuse*," "*Produits de la Grande Chartreuse*," including connexion and run of customers, the 3035
ownership of the trademarks and commercial names used for distinguishing these products, as well as the patterns of the bottles, flasks, boxes and cases used for containing them, the exclusive right to the industrial and commercial name of L. Garnier, the furniture, the utensils of all kind, used for working the goods, primary ingredients, manufactured goods to be found in the warehouses, cellars and stores, and all other appurtenances and dependences whatsoever of the said business * * * are in reality property of the 3036
Congregation of the Carthusians, the deed of sale of 20th November, 1897, being null as having been made in favor of Rey a member of the Congregation, whom the Liquidator has proved by grave, precise and concordant presumptions, to be the dummy of the Chartreux monks"; consequently, "That *the said business with all its accessories, including the trade mark, is properly detained by the Congregation in the terms of art. 18, parag. 3 of the law of 1st July, 1901, and forms a portion of the assets to be liquidated.*"

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On the strength of that judgment and without awaiting the decision of the Court of Appeal which affirmed the judgment on appeal, the Liquidator obtained from the President of the Civil Tribunal at Grenoble in Chambers, an Order authorizing him as a provisional and urgent measure and without prejudice to the merits, to take effective possession of the Works at Fourvoirie as well as of the business carried on there together with its dependencies. That order bears the
3038 date of 17th of May, 1904. Mr. Lecouturier hastened to turn it to account in commencing on *French territory* the use of the marks filed in the name of Abbé Rey ; for that purpose he entrusted the Cusenier Distillery with the manufacture of the liqueur, and entered into a contract with the said Distillery, in accordance with the terms of which it can sell *in France under those marks*, the liqueur so manufactured.

But the French market, thus opened to the Liquidator did not appear to him to be sufficient. Being de-
3039 sirous of extending the sale of the new products abroad, wherever the products of the Chartreuse Monks' manufacture have acquired a legitimate renown, the firm Cusenier sent to various countries, notably to England, the United States, Switzerland and the Argentine Republic, liqueurs coming from the works at Fourvoirie under the cover of Rey's marks. Those liqueurs were seized upon the application of Abbé Rey and actions were entered in the above mentioned countries with a view to prohibit the Liqui-
3040 dator and his assigns from using in those territories the Chartreuse marks.

Thereupon the Liquidator applied, to the Judge in Chambers at Grenoble to give a fresh order authorizing him, *by interpretation and if need be by extension of that of 17th May, 1904*, to obtain delivery of the goods seized abroad and to get the foreign marks, registered in the name of Abbé Rey, transferred to his name. That order was made under date of 15th February, 1905 ; it sanctioned the right of the liquidator in these terms :

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"Whereas Lecouturier has all the powers of a pro-
"visional administrator of the business; whereas he is
"authorized and the duty is upon him to work that
"business to the best interest of whomsoever it may
"concern; whereas he has capacity to make use of all
"the trade marks, commercial names and other em-
"blems which the Chartreux monks had held and used
"in order to designate the products manufactured by
"them; whereas he must take care that the trade
"marks, which are the most important accessories to 3042
"the business, be not imitated and do not fall into
"public property and that the rights which are at-
"tached thereto be preserved by all proper transfers
"and renewals in all countries; whereas he is entitled
"to demand that those transfers shall be made to his
"name, in his capacity as Liquidator and official Re-
"ceiver of the Congregation, subject to the duty upon
"him, at the end of his Receivership, to have them
"transferred or renewed in the name of such person as
"shall be definitely adjudged, to be the owner of said 3043
"business, or in the name of the purchaser of said
"business in case of a public sale.

"Whereas Rey took care to cause the transfer to
"his name of the marks filed abroad, after the deed
"of the sale of the business which was made to him
"by Grezier in November, 1897, which deed was pro-
"nounced to be fictitious by the judgment of 23rd
"April, 1904;

"Whereas that decision involves for Lecouturier,
"representing the Congregation, the real owner, the 3044
"obligation to effect the urgent transfers and re-
"newals, as Abbé Rey himself had done, in order to
"allow of his carrying on the business which he is
"appointed to administrate under the conditions in
"which, under the name of Rey, the Carthusians were
"authorized to do so *under the control of the laws of*
"*each country;*

"Whereas nevertheless a certain number of cases
"of liqueurs, sent by Lecouturier, in his said capacity,
"to England, are alleged to have been seized in the

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" English Custom House by reason of the fact that
" the products in question bear labels with false indi-
" cations of origin ; whereas such seizure and prohi-
" bition cause a serious prejudice to the commercial
" business carried on by Lecouturier in his said ca-
" pacity in the interest of whomsoever it may con-
" cern ; whereas therefore it is proper to authorize the
" latter mentioned to take all the necessary steps to
" cause these troubles to cease and to take possession
3046 " of the confiscated goods, in order to sell them to
" England, *subject to appreciation by the foreign juris-*
" *diction of any difficulties which a legislation differing*
" *from the French legislation might cause in this respect.*

" For these reasons, we find that *by extension* of the
" powers previously vested in him by the Order of the
" 17th May, 1904, Lecouturier, in his said capacity,
" is entitled as official Receiver entrusted with the
" liquidation of the property of the Congrega-
" tion of the Carthusians now dissolved to take
3047 " all proceedings and necessary steps tending to
" the transfer and registration in his name of
" the trade mark previously registered abroad, notably
" in England and in the United States of America
" * * * subject to the trust upon him, upon the
" expiry of his functions to have them transferred or
" renewed in the name of such persons as shall be de-
" finitely adjudged to be the owners of the business in
" question, or in the name of the purchaser of the busi-
" ness in case of a public sale ;

3048 " We find that he is likewise entitled to take de-
" livery of all the cases of goods sent by him to
" England and detained by the Collector of His British
" Majesty's Customs, and also to renew all trade marks
" in the countries in which they reach their term, *subject*
" *to his causing any questions which may be raised in that*
" *respect to be decided by the competent jurisdiction.*"

But on the appeal lodged by Abbé Rey, the decision of the Judge in Chambers was reversed by a judgment of the Court of Grenoble under date 12th December, 1905.

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"Whereas, the Court holds, the Liquidator's de-
"mand tending to the admission of his right to have
"transferred and registered under his name the trade
"marks registered abroad, notably in England and the
"United States, submitted to the Judge in Chambers
"the question of knowing whether the law of 1st July,
"1901, which is a law of exception, rules outside of
"French territory the property of the Congregations
"dissolved, or whether its sway is limited to the prop-
"erty situated on that territory, and whether the trade 3050
"marks claimed by Lecouturier and registered abroad
"are an accessory to the Fourvoirie business, pertain-
"ing thereby to the liquidation ordered by the decision
"of 31st March, 1903, or, whether it constitutes prop-
"erty distinct and independent from said business;

"That the measure demanded by Lecouturier was
"thus such as to encroach upon the main issue and
"prejudice gravely on the merits, and that the Judge
"in Chambers was therefore incompetent to deal
"with it. * * * 3051

"For these reasons, the Court, allowing the second
"exception on appeal brought by Rey, reforming holds
"that the Judge in Chambers was incompetent, conse-
"quently reverses the order of 15th February 1905."

Therefore the Court was refusing the extension beyond the limits of French territory of the powers vested in the Liquidator of the Congregation of the Carthusians by the Order of the Judge in Chambers of the 17th May 1904 and asserted the incomptency of the Judge in Chambers to decide on said extension. 3052

Having been worsted in this first engagement, Mr. Lecouturier did not give up; he appealed to the very same Court of Grenoble; and in the shape of a demand for interpretation of one of its preceding decisions, the decision of 12th July 1905, that very decision which had held that Abbé Rey was a dummy party to the Congregation of the Carthusians, he submitted to it the question of knowing whether the assets of the liquidation which he had been appointed to effect included not only the trade marks registered in France

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" That this point has not been argued by the parties,
" and that the Court would not have failed, had it been
" submitted to it, to examine it in the " whereas " of
" its decision and to solve it in its ' dispositif ' ;

" *That its silence in that respect, exclusive of any discussion on that point, does not allow of admitting as implicitly included in the decision, under an* " *ambiguous or equivocal form, the decision of which* " *Lecouturier claims the benefit and that the interpreta-*
3062 " *tion he demands of the Court would have for its effect* " *to extend beyond what was its sole object the point* " *passed upon by the judgment of 12th July last.*

" That such demand must be passed over as inad-
" missible and that Lecouturier is at liberty to petition
" as he will deem fit ;

" For these reasons, the Court, without examining
" the demand of Lecouturier in his capacity, holds it
" is inadmissible, and orders him to pay costs."

Called upon to estimate the judicial value and bear-
3063 ing of said judgment, as well as of that which had preceded it under date of 12th December 1905, the undersigned hold as irreproachable the doctrine which appears from the one and the other ; from these two decisions it follows, and in their opinion with absolute certainty, that, as the matter stands, the liquidator of the ex-Congregation of the Carthusians is without any power for claiming the benefit of the marks registered abroad to the name of Abbé Roy.

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Discussion.

I.

It is with good cause, in the first place, that the Court of Grenoble has, by judgment of 12th December 1905, reversed the Order of the President of the Civil Tribunal in said town, sitting in Chambers, under date of 15th February preceding.

If there is a certain principle, a fundamental principle, it is that which forbids the judge in Chambers

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to encroach by his order, upon the main issue (Code of Civil Procedure art. 809). A judge in Chambers cannot prejudge the main point of the litigation; that means he must declare himself incompetent and say there is no need for an application every time the exception taken before him is such that he could not pass upon it without deciding at the same time on the main issue, and without thus encroaching upon the rights reserved to the Tribunals that are instituted to deal with it *(Garsonnet, Traité théorique et pratique* 3066
de procédure civile, tome VII., p. 229, 2ème édition tome VIII., N° 3007, page 328: Glasson, Précis de Procédure Civile, tome I., page 330).

Thus the president or the judge that takes his place cannot, when sitting in chambers, correct the so-called errors of a judgment and alter its "dispositif"; if he is allowed, under the terms of art. 806, Code of Civil Procedure to decree on the difficulties which arise touching the execution of judicial decisions, he has no capacity *for interpreting or completing them*, to decide 3067
upon contestations relative to the sense that is to be given to their "dispositif". Decisions are formally unanimous in that sense (See Grenoble, 31st Decembre 1869; Journal des Av. 1871, page 379; Caen, 6th January 1872; Journal des Av. 1873, page 382; P. P. 1873, 5.390; Lyons 12th May 1883; D. P. 1884. 2.39; Bordeaux, 29th October 1888; Journal Arr. Bordeaux 1889; I. 18th August 1898 Pand. Franç. Per. 1899, 2.88.)

Now, it cannot be disputed as authorizing the Liqui- 3068
dator of the Congregation of the Carthusians to cause to be registered in his name, abroad, the marks filed by Abbé Rey, to have them renewed in due time, etc., the President of the Civil Tribunal of Grenoble had not limited himself to decreeing on a difficulty touching the *execution* of the decision of 23rd April 1904; he had been interpreting enlarging the formula of said decision, according to which the business seemingly purchased by Rey, with all its accessories and notably the trade mark, consti-

3069 tutes in reality property detained by the Congregation of the Carthusians, under date of the promulgation of the law of the 1st July 1901, and, in consequence pertains to the liquidation, he had interpreted it in this sense that the marks registered abroad had, in relation with the business carried on at the Grande-Chartreuse and at Fourvoirie, the same character of dependency and hence, they pertained to the liquidation, precisely as the French marks themselves did. From the fact
3070 he was thus extending the powers of the liquidator, the Judge sitting in Chambers was adding to the decision, he was completing it, he was implicitly decreeing what the decision had not decreed, what was neither to decree the affirmative decision of 12th July 1905—that the law of 1901 has an extra-territorial bearing that its effects can extend outside of French territory. That was solving a point not solved by the tribunal, it was encroaching upon the main issue, it was falling into an excess of power. And, in thus appreciating it,
3071 the Court at Grenoble has remained faithful to the principles which govern and limit the jurisdiction of judges sitting in Chambers; its decision escapes every critic.

II.

The same must be said of the decision of the 27th March 1906 by which the Court at Grenoble refused to interpret, in the sense of the Liquidator's wish, its
3072 preceding decision of 12th July 1905, and declared to be inadmissible the demand brought to that effect by Mr. Lecouturier.

Of course a Court of Appeal or a Tribunal may, without injuring the principle of the authority of "*res judicata*" (Civil Code, Art. 1351) be called upon to give anew an opinion on a matter which it has already examined, with a view of interpreting the sentence it has already given, but such capacity of interpretation has its limits, firmly traced by judicial practice. The judge wo exercises it "cannot

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restrict, extend or modify the rights consecrated by his sentence" (Cass. 15 March 1882; Sirey 1882 I. 300; D. P. 1883 I. 59; 15 November 1887; D. P. 1889 I. 153; Pand. Franç. Per., 1888 I. 254; 9 January 1889; Sirey 1889 I. 264; Pand. Franç. Per., 1889 I. 198; 24 February 1890; Sirey 1890, I. 295; Pand. Franç. Per. 1890 I. 335*a* 16 March 1891; Sirey 1892 I. 10; 30 April 1895; Sirey 1895, I. 407; D. P. 1895, I. 415; see also Aubry et Rau 4ème édit. tome VIII., page 404, notes 128, 129; Demolombe, Obligations, 3074
tome VII. N°. 391; Laurent, Principes de Droit Civil, tome XX. N°. 148; Glass. op. cit. tome I. page 424 and the decisions quoted).

Thus, the judge, called upon to interpret the decision which he has formerly given, is bound to remain strictly within the limits of such decision, *without ever being at liberty to extend or restrict its initial bearing.*

He must, in order to assign to it its true sense, grasp the intention that has dictated it, the spirit in 3075
which it has been conceived by inspiring himself both with the considerations that are adjoined to the "dispositif" and the conclusions develop by the parties. And when, from the examination the judge applies himself to, it appears that the terms he has adopted have betrayed his real meaning and have given too broad or too narrow a meaning, he can, and it is his duty to redress them. In the present case nothing could have prevented the Court of Grenoble to state by means of an 3076
interpretation, that its decision of 12th July 1905 had, according to the intention of said Court, a more general bearing than that which appeared from its "dispositif" that such decision applied, in reality, so as to include them in the assets of the liquidation of the Carthusian Order, to the foreign marks looked upon as accessories of the Fourvoirie business, as well as the marks filed in France. Such interpretation would have been quite lawful; issued from the very jurisdiction which had pronounced the

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decision of 1905 and was hence exclusively qualified to establish the sense of it, it would have left untouched the authority of "*res judicata*" which attaches to such decision.

And yet the Court formally refused to adopt such a course; it put aside, by an exception, the demand for interpretation brought by the Liquidator. Because, in fact, for an interpretation to come in, for the judges to be called upon to rectify the terms of a preceding
3078 decision, it is absolutely indispensable to have to deal with an equivocal and obscure text, of such a nature as to raise serious contestation; it is not the place of the tribunals to modify or reform a clear a precise "dispositif" and thus to alter the situation which such "dispositif" has created for the parties, and it is not the place of the parties to ask such tribunals to do so. (See notably Cass. 14 December 1881, Sirey 1882 1 256. 5 July 1882; Sirey 1884. 1.115; D.P. 1883. 1.350; 21 May 1883, D.P. 1884. 1.85; 17 March 1885;
3079 D.P. 1885, 1.250; 15 November 1887; Pand. Franç. Per. 1888. 1. 254; Bourges, 14 January 1898; Sirey 1898. 2.144; Paris, 21 Novembre 1898; D.P. 1900. 2.12; Pau, 13 November 1899; Sirey 1900. 2.35; Algiers, 28 February 1900; the Law of June 29th 1900; Cass. 31 March 1903; Pand. Franç. Pers. 1904. 1.168;—See in the same sense, Aubry et Rau, 4th Edition tome VIII, page 404; Demolombe op. cit. tome VII N° 391-393; Laurent op.cit. tome XX. N° 148-150). The Court of Grenoble did nothing
3080 else but apply such rule, in its decision of 27th March, 1906. It holds inadmissible the demand for interpretation of the decision of 1905 brought before it by Mr. Lecouturier. And why? Because, according to its view, there is no case for interpretation. The decision of 1905 said everything it meant to say, everything it was asked to say. Its decision offers no obscurity, it is free from any equivocation, it is perfectly cleared; it has passed upon all the elements of the litigation, such as brought before the Court.

And the Court does not limit itself to such affirma-

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tion which, strictly, might seem sufficient to justify the exception it opposes to the Liquidator's demand; she will have no doubt whatever subsist about the intention that was its own at the time of the drawing up of its first decision, and which, since, has always remained its own, if we are to judge from the infirmative decision of 12th December, 1905; it is anxious to state the reasons of its attitude. If it resists the Liquidator's demand, it is because such demand raises a question which had not been submitted to it by the 3082 conclusions of the parties, and which hence it could not pass upon, by means of implicit decision: "the question of knowing whether the law of the *1st July, 1901, which is a law of exception and of police*, rules or does not rule, outside of the territory of the Republic, the property of the Congregations dissolved, and whether the marks registered abroad are an accessory of the Fourvoirie business, pertaining thereby to the liquidation, or whether they constitute distinct and independent property from such busi- 3083 ness." The discussion not having touched upon said question, it is not permissible to look for its solution between the lines of the decision; it has remained entire. "My silence in that respect, the Court states, exclusive of any discussion on that point, does not allow of admitting, as implicitly included in the judgment, under an ambiguous or equivocal form, the decision of which Lecouturier claim the benefit; the interpretation which he demands would have as an effect to extend *beyond what has been its sole* 3084 *object* the "*res judicata*" of the decision of 12th July.

But here is a refusal of interpretation which singularly resembles a positive interpretation of the first decision of the Grenoble Court, it is true that said interpretation is not precisely the one of which Mr. Lecouturier meant to secure the advantage; it is such as Abbé Rey would have asked for and hoped for, if it had been his place, it had been part of his character to call upon French justice to appreciate the value of the right of ownership which he was claiming on the

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marks filed by him abroad. The Court affirms that this right of ownership on the foreign marks of the working of the Chartreux has remained out of the litigation it has passed upon, apart from the provisions of its judgment of 12th July 1905.

But that is not all. Desirous not to leave the shadow of a doubt on the spirit that has dictated its decision, it hints at the solution which it would have given to the question of the application outside France of the
3086 law of 1st July 1901, if such question had been brought straight before it. *Said law*, the Court says in its decision of 27th March 1906, *is a law of exception and of police. It is a law of exception*, it had already said, when it was reforming, under date of 12th December 1905, the order of the judge sitting in Chambers at Grenoble. And the decisive importance of such a declaration, of that double declaration, will clearly appear a little further on.

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III.

Vainly, to evade the consequences which the real incumbent of the marks registered abroad, for the products of the working of the Carthusians, will not fail to draw from the two decisions which have just been analyzed, would the Liquidator claim to establish a distinction between their " dispositif " and the " dispositifs " which are attached thereto. Vainly
3088 would he say that, in reality, in both the matters which the Court passed upon, either upon the point of fixing the extent of the powers of the liquidation, after the Judges sitting in Chambers, or upon the point of deciding upon the demand for interpretation of a former decision, it was led by simple questions of procedure, without touching upon the main point of the litigation, and that, in any case, if it did touch upon the main issue in one or another of its preambles, the statements which may have found place there are in themselves deprived of all value and

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authority, the force of a judicial decision taking refuge wholly in the " dispositif " which settles the contestation, and not claimable on preambles which are but " arguments " but a " discussion ".

It would be, in fact, greatly misjudging the close bond that unites the preambles of a judgment or a decision to the " dispositif " by which it admits or reverses the conclusions of the parties. The law itself proclaims that bond and sanctions it when it requires that every judicial decision have its " whereas " (Law 3090
of the 20th April 1810, art. 7) and every day the Court of Cassation annuls judgments and decisions for absence or insufficiency of " whereas."

It is true that one should not generalize too much the consequences of that bond and should on the contrary, establish a distinction between two kinds of cases: the cases in which the " dispositif " proves sufficient in itself as such, in as much as it contains in clear and precise terms the finding of the Tribunal or of the Court and the cases when the " dispositif " 3091
considered separately and without regard to the " whereas ", could not convey the real bearing of the decision rendered. In these latter cases, there is to found so close a relation between the " whereas " and the " dispositif " that the authority of " *res judicata* " applies necessarily even to the " whereas " whilst in the first cases, which are the most frequent, in practice, this relation cannot have such bearing. Thus is explained, without it being justified, this too absolute affirmation of certain decisions and certain authors, 3092
that the authority of " *res judicata* " applies only to the " dispositif " and does not concern the " whereas " (See Dalloz suppl. V. *Res Judicata* n. 9 and follow). It is therefore necessary to distinguish, with some jurisconsults, with regard to " *res judicata* " between *subjective* " whereas " which are simple motives of the determination of the judge and reflexion of his personal opinions, and the *objective* " whereas " which are the very soul and nerve of the judgment *anima et quasi nervus sententiae*, which refer to the judgment, which

3093 are one with it, which form its essential basis, without which that judgment cannot be understood and cannot stand.

Whatever be the place they occupy in the finding these objective "whereas" are, truly, one with the "dispositif"; they complete it, they constitute with it the decision of the judge, and hence they participate with it in the authority of "*res judicata*".

Authors and decisions agree in their admitting it:
3094 (See Cass. 25 June 1869; Sirey 1869, I. 422; D. P. 1871. I. 223; Aubry et Rau tome VIII, page 369; Demolombe op. cit. tome VII N° 290, 291; Laurent, op. cit. tome XX N° 29; Griolet, on *res judicata*, page 113 and follow; Garsonnet op. cit. 2ème édit. tome III page 543, Note 15; Cadot, *on the principle that the authority of "res judicata" results, not from the "whereas" but from the "dispositif" of the judgments and decisions*, in the Revue crit. de législ. et de jurispr. 1863,
3095 page 452).

And such is most certainly the character of the "whereas" that on two occasions, the Court of Grenoble has stated in support of decisions it rendered in 1905 and in 1906, against the claims of the Liquidator. Without said "whereas" drawn from the fact that the law of 1st July 1901 is, with regard to the congregations, *a law of exception*, neither the decision of 12th December 1905, nor that of 27th March 1906 could neither be understood nor justified.

3096 *It is because the law of 1901 is a law of exception*, and that, consequently, its application outside of France raises most delicate questions, that the Court has reformed on the 12th December 1905, the Order by which the Judge sitting in Chambers had authorized the Liquidator to have the marks filed by the representatives of the Carthusians abroad, registered and renewed to his name. If the law on the contract of association was not a law of exception, the decisions which had ordered the liquidation of the property of the Carthusians and defined the mission and powers of the

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Liquidator, would have evidently, the same as that law itself, a general bearing, no question could arise, in France at least, on the point of knowing whether the foreign marks are included in the liquidation. And, by allowing the Liquidator to claim them, the Judge sitting in Chambers would bring no prejudice to the main issue. The "whereas" invoked by the Court of Grenoble in its infirmative decision, is therefore one with the "dispositif" of said decision; it is its necessary sup- 3098
port, it must have the same authority.

The case is not different either, when the Court bases itself on the exceptional character of the law of the 1st July, 1901, to refuse interpreting its decision of 12th July, 1905.

It is because the law of 1901 is a law of exception that it is impossible to consider the foreign trade marks as virtually included in the provisions of said decision and that no interpretation is necessary for a decision that is perfectly clear and quite sufficient in 3099
itself. If the law of 1901 was not a law of exception, the terms of the decision would lead to equivocation; it might be asked what it meant to do, whether it meant to include in the liquidation the marks filed abroad as well as the French marks, there would be room for interpretation.

The "whereas" given by the Court, in support of its refusal, in the decision of 27th March, 1906, is therefore here again, inseparable from the "dispositif" one cannot conceive the "dispositif" without the "whereas" 3100
and it imparts to it the authority that it vested in said "dispositif".

IV.

"The law of 1st July, 1901, is a law of exception" such affirmation, made by the Court of Grenoble in its decision of 12th December, 1905, repeated in its decision of 27th March, 1906, is of paramount importance when the question is to settle the limits of the

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sphere of application of the new text in space, that is to say with regard to the territory. Therefore we should not be surprised at the energetic contradictions which it has raised.

A Law of Exception: It is possible to qualify thus a law that was inspired solely by the principles of common law, a law that is in keeping with the constant tradition of French legislation. There is here, it has been said, an inaccuracy and an injustice.

3102 In subordinating the attribution of juridical personality to the Congregations to the necessity of legislative authorization, the law of 1901 has remained faithful to the rule of our public law which calls for the intervention of the State or of the monarch for the formation of a corporation (a person without a soul). The law of 1901 holds, after all our old law, after our revolutionary law, after the very laws of the Restoration, that a congregation cannot hold rights unless it be authorized and recognized that a non-authorized
3103 congregation is as if it did not exist. The refusal of authorization to the congregations which, until the promulgation of the new law, had but enjoyed an administrative tolerance and had had but an actual existence has therefore had, as a natural and necessary consequence their vanishing from the juridical scene, their dissolution. In the dispersion of the religious congregations which have not complied with the requirements of the law, we find nothing but the application of traditional principles common to all
3104 civilized States. And besides, the very situation that is created for the members of the congregations dissolved, members who are obliged to renounce their calling, is, in a way, as Mr. Waldeck-Rousseau had undertaken to demonstrate it before the Chamber of Deputies at the time of the general discussion of the law on the contract of association, commanded by the general rules which are written in the Civil Code, and to which no citizen, were he a stranger to monastic life, can refuse obedience. There are certain things which are unmarketable and cannot be made the object

of a contract : No Frenchman could validly renounce his right of owning, his right of alienating, his right to marry. Such renunciation would be null as having an illicit object, as being contrary to public order. Now, religious vows, which are at the base of every congregation, impose on those who pronounce them, poverty, chastity, submission to their superiors, that is then abdication of their personality, the abandonment of rights which are not marketable. 3105

Therefore the fact of prohibiting religious congregations is not to institute a rule of *exception*, it is to remain, within the spirit and the letter of the Civil Code, it is to apply common law. In answer to those affirmations the undersigned are of opinion, on the contrary, with the Grenoble Court, that the law of 1st July 1901, in the disposition which concerns religious congregations is a law of exception, and that this character cannot be seriously contested. 3106

Alien to any political preoccupation, they have not to examine whether and to what extent the measures taken against congre ations were legitimate and necessary. The legislator thought them such, that is sufficient, but what the legislator has not been able to do, with his omnipotence is to change the meaning of the words and the reality of things, it is to see an application of common law in rules which are manifestly and directly contrary to common law. 3107

What is the common law, at the present time, of corporations (a person without a soul), of associations ? Since the law of 1st July 1901 which, be it to the honor of the third Republic, has repealed art. 291 of the Penal Code and the other restrictive and bothering dispositions of anterior legislation, it may be resumed in one word: *Liberty.* Associations, even including more than twenty people, are free ; they can, says art. 2 of the new law, "freely form themselves without authorization or preliminary declaration." Alone, religious congregations are left outside of this generous provision ; no liberty for them, the rule of preliminary authorization for 3108

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them, and for their members, prison and fine if they have not obeyed the law. Is not that exceptional dealing? is not that a derogation to the common law of associations? Vainly, in order to contest it, would one invoke the tradition, uninterrupted to this day, of our law. It is not yesterday's common law we must appeal to, in order to bring it into comparison with the rigorous measues enacted against the congregations; it is the common law of to-day, the common law insti-

3110 tuted by the 1901 law in which these very measures have found a place. Now, there is no doubt that with this liberal common law, the precarious situation which is made to the congregations, offers a singular contrast. For them, the liberty which is the rule or ordinary associations is turned into a jealous ruling; common law sustains *an exception.* And the Court of Grenoble could not but record it. But that is not all. The *exceptional* character of the rule imposed on the religious congregations by the law of 1st July 1901 was con-

3111 siderably aggravated by the application which said law has received. Every demand for authorization which the various congregations have brought so as to abide by those prescriptions has systematically and mercilessly repelled, it is therefore impossible to link to tradition and to the principles of our public law the ostracism which has been applied to them without examination and by way of a general measure.

On the other hand one must not look to the Civil Code for the justification of the obstacles put by the

3112 law of 1901 to the birth and working of religious congregations and maintain that said obstacles are conformable with the principles that rule the formation of contracts. If religious vows have, as it is asserted, an illicit character, that must involve the nullity and even the inexistence of the congreganist lien which implies them, one could not understand that in the law itself provisions be found for the event of congregations being authorized. There is no congregation that does not require from its members the triple vow of poverty, chastity, obedience. Now, will the legislator's interven-

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tion, in the shape of an authorization, have the power to restitute to commerce, to transform into a licit object this abandonment of the primordial rights of man, this sacrifice of the free will that, we are told, the Civil Code condemns with so much severity? Common law does not lend itself to such composition. Whatever be the point of view, the law of 1st July, 1901, in so far as it settles the fate of religious congregations, is therefore a *law of exception.*

The inference which is to be drawn from there, is 3114
that said law can have no application outside of French territory. Made for France, with a view to French necessities, it is one of those laws of police and of security spoken of in art 3, pargr. I of the Civil Code, and whose action necessarily stops at our frontiers. The undersigned have nothing to add on that point to the demonstration which has been made by one of them, in a preceding opinion. It is certain that the harsh treatment inflicted by the new law on congregations and congreganists can no more be invoked out- 3115
side of France than could be, at the bar of our tribunals, invoked the incapacity of succeeding or contracting pronounced by a foreign law against an appealable party, on account of his race, his color or his religion, on account of a measure of political proscription of which he might have been the object. (See Andre Weiss, *Traite Theorique et Pratique De Droit International Prive*, tome III. page 382). This is all the more certain as the law of the 1st July 1901 was not satisfied with 3116
keeping religious congregations and congreganists out of the new common law which it institutes for associations; it enacts in some respect real measures of expropriation, nay of confiscation, for the patrimony of the communities. Protests were raised against such accusations; people said it was doing the French legislator a gratuitous injury in attributing to him an idea of spoliation against whomever it may be, even against congreganists. The undersigned have not to excuse themselves for an injurious intention that is

3117 far from them. The authors of the law of 1901 have done what they thought fit to do, what their conscience of their legislative duty and of political necessities has prompted them to do. But it is impossible to ignore that their work carries with it a germ of dispossession, eventual at least, for the monks who, by their industry, the blending of their initiative and energy, have founded or increased the wealth of the congregations dissolved. No doubt they are allowed
3118 to claim the property and stock that were theirs before their affiliation, or that might have come to them since, either by succession *ab intestat* in direct or collateral line, or by gifts or legacies in direct line. But when the liberality between persons living or testamentary which they may enjoy does not come from a parent in direct line, the claim is only admitted if the person so benefited proves that he is not within one of the categories of persons interposed provided by art. 17 of the law of 1901.
3119 Lacking said negative proof which it is difficult, sometimes impossible to show, the amount of the gift or legacy is included in the assets of the liquidation, and the congreganist cannot put forth any claim to it. What name give the forfeiture that reaches him thus, contrarily to the general principles of our legislation ?

No doubt again, it is specified in art. 18 that the allocations in capital or in life annuities may be attributed, on the assets of the liquidation remaining after
3120 all previous deductions drawing (prélèvements) to the members of the congregation dissolved that would be without reliable means of support or who would show they have contributed to the acquisition of marketable property by the fruit of their personal labor. But it looks very much as if congreganists, in order to enjoy the benefit of that equitable and humane measure, were bound to submit entirely to the provisions of the law of 1901 ; they must no longer be congreganists, they must have broken their vows, they are faced with conditions that very few of them will or will be able to ac-

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cept. Their fidelity to the faith they had embraced will deprive them of any allocation on the patrimony they have helped to found. Will they not be right in calling themselves the victims of *a confiscation.*

Lastly, what will become definitely of the balance of the congregations dissolved if there remains a sum at the " Caisse des Dépôts et Consignations " after all actions brought in pursuit of claims or restitutions? (reprises) (withdrawals).

3122 That question was sharply discussed in the Chamber of Deputies and in the Senate, but it is pretty sure given the observations which it gave rise to in various senses, that the opinion of the majority was favorable to the attribution to the State, as *res nullius*, of the congregation's property unclaimed by the parties interested. In this respect, the second report brought by Mr. Trouillot to the Chamber, after the suppression by the Senate of the paragraph which states that congregations could not constitute societies *de facto*, and that their members 3123 could not share in the apportionment of the balance of the assets, is quite clear and precise. " The right of the State, the honorable reporter declared, remains untouched, and the real debate in the Senate was only brought to bear on the point of knowing whether it was convenient to proclaim it or not. For our part, we should absolutely refuse to sanction a legislative provision that would admit for the non-authorized congregations under some feigned form, a legal existence, thus violating the certain principles of our public law. 3124 The text that is sent back to us by the Senate merely says that it is not the place of Parliament but the Tribunals to proclaim and apply said principles. With the reservation of the right that we do not deny the legislator to lay down rules for interpretation which shall not be ignored by the authority entrusted with the care of applying the laws, it is in that very precise sense that your commission has adopted without any modification the new text of art. 18. It is right to add, moreover, that all the provisions of said article agree

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in rendering impossible the fact of ignoring the sense of it, and show most evidently that it is really by a scruple of form, and not by main reasons that the Senate refused to proclaim himself, at the same time as the impossibility for non-authorized congregations to acquire legally with any right, the absolute right of the State over the balance of their property. The very fact of authorizing the donors, testators or their heirs to claim the property handed over to non-
3126 authorized congregations, shows sufficiently that neither the congregation nor its members have been able to acquire on said property a valid right of ownership. The paragraph that provides for the allocation of pensions to members of the congregation who would show they have contributed to the acquisition of marketable property by the fruit of their personal labour carries with it a yet more striking *dispossession* and affirms more highly the refusal of the law to see in members of a congregation dissolved legitimate co-
3127 proprietors. *Such provision necessarily supposes that after deduction of the liberalities whose restitution shall have been granted the surplus of the patrimony illegally detained by a non-authorized congregation will leave the hands of its members to enter the domain of the State.*

The point is very clear: The State is about to claim as property without an owner, by virtue of the law of 1st July 1901, and upon the foundation of articles 539 and 713 of the Civil Code, all the property of the congregations that shall not have absorbed the previous
3128 deductions (drawings prélèvements) and restitutions (reprises) (with drawals) provided by art. 18. What is then this seizure by the State announced by the authors of the law of 1901. Without lending the words a tragical gravity that they have not, is not such seizure a kind of confiscation, an eventual confiscation, a confiscation kept as a reserve for the case when the liquidation of the congreganist wealth would yield favorable results.

The law of 1st July 1901, *a law of exception* because of the derogatory character to the common law of the

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provisions which it has applied to congregations is therefore also *a law of confiscation*, by its consequences, certain or possible. Again from this point of view, its effects are limited to French territory, to the persons and to the property on such territory. Foreign Tribunals cannot be called upon to provide for their execution; it is a *national and territorial* law, and what comes to prove that those who have made it have not been mistaken as to the bearing of application it is capable of is that, 3130 far from extending it to foreign countries lying outside their action and legislative competency, they have excluded from its way, barring a special provision of the head of the State, our very colonial possessions others than Algeria. All that has been said (see Weiss's opinion already quoted) and there is no need to say it again.

Moreover the Liquidator is not contesting directly the strictly territorial character that attaches to the provisions of the law of 1st July 1901, relative to con- 3131 gregations as to the other French laws of police and of security. Let it be so, he says, the law of 1901 has no hold upon the property of the Congregations that is *situated* abroad, for instance on such of their real estates that are situated on the other side of our frontiers.

But the trade marks worked in every part of the world by the Carthusians or by their agents are not *property situated abroad*. Although they are registered abroad, although they are placed under the safeguard 3132 of *foreign law*, said marks have but one situation, that of their country of origin, that of the situation of the business of which they are a dependency *they are situated in France*, at the Monastery of the Grande Chartreuse, at the Fourvoirie factory; hence the French law is sufficiently qualified to reach them and bind them to its prescriptions.

The undersigned have not to go back, in order to demonstrate its inaccuracy, to the would be indivisibility which it is being tried to establish between the

3133 marks registered in the various countries and that which has been dispossessed in the country of origin; between the marks themselves and the business of which they most often are the accessory. Be they dependent or independent, either with regard to the business, or with one to the other, trade marks have no other situation but that of the place where they are in fact the object of industrial and commercial working. *Property* is situated, in the legal sense of the word, 3134 where it does exist, where it brings to its owner the advantages which are within it. A real estate is situated at the place of its geographical seat, because it is there that the *jus utendi*, the *jus fruendi*, the *jus abutendi* will be usefully exercised. There is no difference in the case of personal corporeal property; and if incorporeal property, debts are considered not without some hesitation as situated at the domicile of the debtor, it is because at such domicile shall the creditor obtain the satisfaction that is due to him; there shall 3135 be realized in his favor his debtor's promises. A similar rule must be applied to trade marks. The trade marks are situated in the place where they bring their holders the benefit of the monopoly they imply. The intellectual property of which they are the symbol has not therefore a unique situation; it is situated in all the countries where legal protection is settled for it; the marks of the manufacturing of the Chartreux are not situated in France only; they are situated wherever they have been registered and filed; *they are* 3136 *situated abroad*, and French law cannot prosecute them there any more than it could have an action over a house or a field owned by a Frenchman out of France.

We must go further. Even supposing that the marks all the marks of the manufacturing of the Carthusians, be they registered abroad, may be considered as being situated in France, as well as the business to which it is tried to show they pertain, it could not be contested that the foreign authorities and the foreign tribunals have the right and for duty

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to refuse their co-operation to and to hinder pretensions of which they would be the object, every time these pretensions will appear to them as being contrary to international public order, that is to say to the economical, political or moral order of the State who has placed confidence in them. It is a superior principle of defence and protection to which all legislations bow, and said principle finds its application even with regard to property, materially or fictitiously situated abroad. Is there need to say that 3138
the French tribunals will refuse to sanction an obligation contrary to good morals, even were the party under the obligation domiciled outside of France, and hence the debt itself were considered as situated abroad?

Now, a similar scruple must prevent foreign tribunals from admitting the claims of the Liquidator of the Carthusians. Those claims are based upon a law of exception, upon a law of confiscation, that is to say upon a law whose scope is limited from the very 3139
state of things, to French territory, and which could not extend its effects beyond, without compromising local public order. The Liquidator of the congregation dissolved in France, but still alive abroad, should not be allowed to invoke the sort of civil death which has struck it in our country to be put into possession of trade marks registered abroad any more than the heir of a foreigner *civilly dead* would be allowed in France, since the law of 31st May, 1854, to claim the property, personal or real estate, corporeal or incorporeal prop- 2140
erty, that happen to be there. Foreign jurisprudence has, with several important decisions, admitted the soundness of the considerations above quoted.

Firstly by a judgment of the Buenos-Ayres Tribunal (Argentine Republic) which under date of 23rd December, 1905, refuses to grant *Exequatur* to the decisions of French justice rendered in favor of the Liquidator Lecouturier. This judgment is based upon * * * 6° seeing the character attributed by the judge in his " whereas " to the law

3141 of 1st July 1901, *the inadmissibility of the judgments in the Republic is evident, because the law which has prompted them is contrary to the principles and views of the country since it means to deprive the owner from rights legitimately acquired, conformably to the laws of the nation ; 7° The constitution of the Republic guaranteeing rights and privileges which the constitution and its laws grant and sanction, the fact of ordering, in the manner that is demanded, the transfer of the marks*
3142 *would be, without any doubt, injure the principles of the constitution ; it would be an infringement of national sovereignty, as the aim of said judgments is to deprive Marius Celestin Rey of the enjoyment and exercise of rights legitimately acquired.*

We have, on the other hand, a decision of the Swiss Federal Tribunal sitting at Lausanne who, passing upon an action for counterfeiting brought in the criminal court by Abbé Rey against several merchants in the Vaud canton, expresses himself, touching the claims
3143 of the Liquidator in terms singularly energetic : "The liquidation open in France conformably to the law of 1901, states that decision of 13th February 1906, applied only, seeing the bearing of that legal provision and the nature of things, to the fortune of the congregation that was *situation in France.* The dissolution, of the Congregation, as a corporation, does not injure generally either the commercial capacity or the property of the Congregation ; it was merely a question of the Congregation's expatriation and to wipe off the
3144 French territory mortmain property ; to such end and effect was the liquidation to be used. *If in such a case commercial enterprise is transferred to the State, that does not imply that marks duly inscribed abroad are to share the same fate, and if the Grenoble decision had the scope—which does not appear from its text—to extend its effects to Switzerland, execution should have been refused by application of Art. 17, Al. 3 of the Franco-Swiss convention of 1869, for this reason that the rules of public law or the interest of public order in Switzer-*

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land are opposed to a similar decision of a foreign jurisdiction receiving its execution in the latter country."

The undersigned are consequently of opinion that no critic can be levelled at the decision of the Grenoble Court of 12th December 1905, which has reformed the order of the Judge sitting in Chambers of the 15th February preceding, nor at the decision of the same Court who refuse to interpret on the 27th March 1906, the decision issued on 12th July 1905.

Both those decisions make an exact application of 3146
the general principles of law; their motives are regularly drawn up, and from their "whereas" which are one with the "dispositif" and therefore participate in the authority vested in said "dispositif" we must conclude that the law of 1st July 1901 is a law of exception, at least with regard to the religious congregations: its scope of application is hence limited to French territory as it has been established above and in Mr. Weiss' opinion of 26th July 1905, a copy of which is annexed to the present opinion. 3147

Given and considered in Paris, June the 7th, 1906.

[Execution and legalization on original.]

Complainants' Exhibit 26 (Weiss) Buenos-Aires Judgment of December 23, 1905.

[Translated from the Spanish.] 3148

COPY OF THE DECISION RENDERED BY DR. GASPAR FERRER IN THE ACTION INTRODUCED BY MR. HENRI LECOUTURIER, REQUESTING EXECUTION OF A FOREIGN JUDGMENT.

Copy. Buenos-Aires, December 23, 1905.

Examined the files from which it results:

That Dr. Thomas A. le Breton appeared before this tribunal in the name of Mr. Henri Lecouturier, declaring: That by law made in France on July 1, 1901,

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and promulgated December 4th of the same year, called "Associations Contract," rules were established for the admission and recognition of societies having a commercial purpose determining that: "No religious congregation could form without an authorization given by a law which would establish the conditions of its operation" and that "the congregations existing at the moment of the promulgation of the law, which had not been previously authorized or recognized,
3150 should within the period of 3 months, make proof of having complied with the necessary formalities in order to conform with its prescriptions, and in default of this proof, they would be considered as dissolved by law, the same as the congregations to which the authorization had been refused." That among the different existing and non-authorized congregations was that of the Chartreux which applied for the desired authorization, which was refused to it by the Legislative Power.—That under these conditions, the Procu-
3151 rator of the French Republic applied to the competent judge, requesting to proceed with the appointment of the judicial receiver to take charge of the properties, and decision in compliance therewith having been rendered, Mr. Henri Lecouturier was appointed in the said capacity as appears from the judgment duly legalized and attached hereto under letter A.—That notwithstanding this judicial decision, Mr. Celestin Marius Rey "Treasurer Superior" of the Congregation, did not turn over all the properties
3152 belonging to the latter, for which reason the judicial administrator and receiver brought an action against the said Mr. Rey for the purpose of obtaining a firm verdict in which—the bearing of his court order having been determined—was ordered the remittance of all the properties—a verdict which he obtained in due time and bearing letter B. In the said verdict it was decided that "the Father Rey is obliged to remit to Lecouturier or his legal representative, the keys to the shops, as also all the books, documents and papers relating to the business in question, and also all the

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trade marks belonging thereto, the receiver, in case of necessity, being able to take possession of everything as above with the aid of public force * * * ."

That although in this decision all the trade marks were comprised, Father Rey nevertheless objected to turning over those registered in foreign lands, for which reason it was again necessary to bring action against him before the French tribunals, by which the verdict annexed hereto under letter C was rendered, in which it was definitely established that :—" As admin- 3154
istrator-trustee charged with the liquidation of the properties of the Congregation of the Chartreux, at present dissolved, he remained authorized to take all steps and measures 'temporarily held up' to effect the transference and the registration in his name of the trade marks previously registered in foreign lands in the name of Marcel Marie Grezier and that of Celestin Marius Rey "— that the President of the French Republic ordered that these verdicts be executed.

That Father Rey having had registered in the Ar- 3155
gentine Republic the marks Nos. 6240 and 6455 relating to the Chartreuse cordials, he (Le Breton), presents himself in the exercise of the power conferred upon him and by virtue of what is prescribed in the above-mentioned verdicts, and requests that these judgments be executed, by addressing the required communication to the Commissioner of Patents and Trade Marks, in order that he may proceed with the inscription of the transference of the said marks to the name of Mr. Henri Lecouturier, comformably with the prescriptions 3156
of paragraph 11 of the Law 3973.—That, as it is a question of judgments rendered with the intervention of Father Rey, the legal basis of the application is indisputable, as the latter is not contrary to the laws of the land relative to all he is asking for.—That after examination by the Fiscal Procurator (Public Minister) the execution of the above said judgments be ordered. —The Federal Fiscal Procurator having been heard, the latter requests the rejection of the application in question by reason of its absolute lack of foundation,

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as it is contrary to the spirit and the text of the legal provisions in force in the Republic.

Intervention having been granted to the representative of the party against whom the execution of the said verdicts is asked, the latter appeared and declared (folio 70): That by virtue of the clauses of the National Constitution and the dispositions of basis and of form of our legislation, he requests the rejection of the action of the attorney of Mr. Lecouturier, with
3158 special condemnation to the costs.

In consideration:

1. That the facts once established, it is necessary, when judgment is pronounced to examine the principles which underlie the legal dispositions in force in the Republic, and, having them in view, to decide whether the judgments rendered by the Tribunals of the French Republic and attached to the file, unite and present all the guarantees and formalities required in order that this Tribunal, in the exercise of its powers, can sup-
3159 port its high jurisdiction by granting for their execution the authority with which it is vested.

2. That, as there exists no treaty which regulates the principles of execution of judgments rendered by their tribunals and that, in order to adhere to the terms of our Constitution this would be, if it existed, a law of the order of "sub judice", it is necessary in regard thereto and as a consequence, to study as basis of the decision the pertinent dispositions of our legislation.

3160 3. That in accord with this, the examination of article 559 of the Code of Procedure of the Capitol, incorporated by special law in the National law, becomes necessary in an evident manner, because it agrees with what is prescribed in its dispositions,—that the Tribunal must consider whether the judgments, the execution of which is asked for, present the required formalities and whether the origin, the reasons and the purpose of the said judgments are not contrary to the principles established in the Laws of the Republic.

4. That the legal disposition above mentioned sanc-

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tions in the first and in the third paragraphs, as fundamental guarantees, that the foreign verdict in order to have force as such in the Republic "must have been rendered in sequence of the exercise of a personal action" and "that the obligation which gave cause to the execution be valid in accordance with our laws"—in regard to the disposition of which the tribunal complying with the purposes of their institutions and in their fulfillment must necessarily consider the nature of the judgments pronounced by 3162
the Tribunals of France by studying, as has been said, the origin, the reasons and the purpose of the said judgments, leaving absolutely aside every other point of view which would not be the legal point of view.

5. That in accordance with this and examining the judgments forming the subject of the present decision, the copies and translations of which are attached to this file—it follows from their simple reading that the said judgments were not rendered in consequence of a 3163
personal action, but for the purpose of carrying into effect a law of a politic-social order, as is the law of July 1, 1901. From which it is evidently concluded that the origin and the purpose of these executions can have no other character and no other bearing than those of the law itself which has caused them and it is thus proper to declare that the said judgments do not in any manner possess the guarantee contained in paragraph 1 of the above-cited legal disposition:

6. That being given the character attributed by the 3164
Tribunal in the above consideration to the Law of July 1, 1901, its inapplicability in the territory of the Republic is evident, since the law which gave cause for the execution is contrary to the principles and to the purposes of those of this country, because it aspires to deprive the holder of the rights legitimately acquired in conformity with the Laws of the Nation, such as that on Trade Marks, Commerce and Agriculture.

7. That the rights and privileges, which the Constitution of the Republic and its laws grant and sanction

3165 being under protection of the said Constitution, to order the transference of the marks No. 6240 and 6455 in the form requested, would without any doubt violate its principles, by curtailment of the national sovereignty, as the purpose of the decisions presented is to deprive Mr. Marius Celestin Rey of the enjoyment and the exercise of the legitimately acquired rights.

For these reasons, in accordance with the conclu-
3166 sions of the memorandum folio 70 and the examination by the Public Minister, judging in a final manner, I decide:

That there is no cause for the execution of the judgments presented nor consequently for the transference of the Marks 6240 and 6455—with special condemnation to the costs.

That this be made known by the original and the original be returned.

Thus pronounced, ordered and signed in the Audi-
3167 ence Chamber of the Tribunal of the Capitol on the date as above.

G. FERRER.

[Here follow certifications and legalization.]

NEW YORK, August 8, 1907.

I, the undersigned, do hereby declare under oath, that I have made the above translation of the copy of the decision of Dec. 23, 1905, delivered in the Argen-
3168 tine Republic *in re* Lecouturier vs. Rey. My occupation has been that of translator in patent causes for more than fifteen years, during which time I have made a very large number of translations from French into English. I believe the above to be a correct and careful translation.

HERMAN KUSTERER.

Sworn and subscribed to before me this ninth day of August, 1907.

(Signed) WM. LOWE,
(Notarial Seal.) Notary Public No. 184,
New York County.

3169

Complainants' Exhibit 27 (Weiss).

DECREE OF THE SWISS FEDERAL TRIBUNAL

PENAL COURT OF CASSATION,

of February 13, 1906, in the cause pending between Celestin Marius Rey, domiciled at Barcelona, (Spain) and George Blanc, patent agent, at Lausanne, 3170

Appellants for Reversal

and

J. E. Jaccard, Paris ;
Manuel Freres, L. Bechert, L. Barraud, F. Wenger, H. Cottier, Paul Winandy, all of Lausanne ;
Alfred Berchier, Jules Freymond, of Vevey ;
Oscar Legeret, Constant Blanchod, Ami Durand, 3171
Jeanneret & Kues, of Montreux ;
Constant Tzaut-Serex, of Clarens ;

all accused of infraction of the federal law of September 26, 1890 on manufacturers' and trade marks, relative to the mark known under the name of "Chartreuse."

Lausanne, Printing Office of Georges Bridel & Co.

1906. 3172

SWISS FEDERAL TRIBUNAL

PENAL COURT OF CASSATION.

Sitting of February 13, 1906.

Presidency of MR. MONNIER.

Present: Judges SCHURTER, HONEGGER, OSTERTAG & PICOT.

Called the appeal for reversal filed by Celestin Marius Rey, and by the patent agent George Blanc, of

3173

Lausanne, against the decree of non-suit delivered October 5, 1905, by the Indictment Court of the Canton of Vaud, in favor of Messrs.

J. E. JACCARD, of Paris;
MANUEL FRÉRES, L. BECHERT, L. BERRAUD, F. WENGER, H. COTTIER, PAUL WINANDY, all of Lausanne;
ALFRED BERCHIER, JULES FREYMOND, of Vevey;
3174 OSCAR LEGERET, CONSTANT BLANCHOD, AMI DURAND, JEANNERET & KUES, of Montreux;
CONSTANT TZAUT-SEREX, of Clarens;

following the inquiry instituted against the latter by the examining judge of the Lausanne district, and by the justices of peace of the districts of Vevey and of Montreux, as also of the complemental inquiry instituted by the examining judge of the Canton of Vaud, for infraction of the federal law of September 26, 1890,
3175 on manufacture and trade marks, relative to the mark known under the name of "Chartreuse".

Heard the delegated judge in his report.

Seen the file of the case, from which result the following facts:

Under date of June 15, 1898, Celestin Marius Rey, then a monk in the convent of the Grande-Chartreuse, had transferred to him by A. Grezier, attorney of the said convent, the marks filed in Switzerland at the Bureau of the Industrial Property under numbers 10,169
3176 to 10,176, and furthermore had registered in his name the marks under numbers 10,177 to 10,181. Following the French law on congregations of July 1, 1901, which declares as dissolved all the non-authorized congregations, and in view of the decision of the Chamber of Deputies under date of March 26/28, 1903, refusing the authorization to the Order, or Congregation, of the Chartreux, the latter was dissolved; an administrator-sequestrator was appointed, in application of article 18, section 3 of the same law, with the charge to liquidate the property of the said congregation, as well at its

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principal seat, as in its diverse agencies, &c. By order delivered in urgency on May 17, 1904, the receiver, or administrator-sequestrator, was put into possession of the commercial holdings of the Chartreux.

By judgment of April 23, 1904, the civil tribunal of Grenoble had pronounced that the commercial holding as manufacturer of cordials, comprising the property of the trade mark registered in the name of Rey, as also the commercial names serving to distinguish the products, is in reality the property of the Congregation 3178
of the Chartreux, and that in consequence, the said commercial holding, with all its accessories, forms part of the assets to be liquidated. This judgment was confirmed by decree of the Court of Appeals of Grenoble of July 19, 1905. Rey brought against this decree an action for reversal, the fate of which is at present unknown.

By order of the President of the Tribunal of Grenoble of February 15, 1905, the receiver Lecouturier was authorized to take all steps and to follow up all 3179
proceedings tending toward the transfer and registration in his name of the trade marks earlier registered in foreign lands, notably those under the name of Celestin Marius Rey. The latter claims that this order was annulled by the competent tribunal (see decree of the Court of Appeals of Grenoble of December 12, 1905).

The receiver charged—notably also as concerns Switzerland—Mr. J. E. Jaccard of Paris with the placement of the cordial manufactured by himself as ad- 3180
ministrator of the commercial holding of the Chartreux, who supplied to the warehouse of Lausanne, merchandise bearing the mark precedingly registered in the name of Rey. Jaccard sold the merchandise, either himself or by the intermedium of an agent Pascalis, of Geneva, to several dealers in the places of Lausanne, Vevey and Montreux.

The Chartreux are continuing the manufacture of their cordial at Tarragone (Spain) where they founded a stock company under the name of Union Agricola ;

3181 they are exploiting their products under a new mark. The receiver of their properties in France brought action, before the competent French tribunals, against the Union Agricola and its customers, for infringement of the mark and the commercial name; this action was however dismissed by judgment of the Tribunal of Grenoble of May 18, 1905.

On May 3/4, 1905, the business agent, G. Blanc, of Lausanne, filed with the examining judge of the dis-
3182 trict of Lausanne, and the Judges of the Peace of Vevey and Montreux penal complaints for infractions of the federal law on manufacturing and commercial marks—as well in his own name as purchaser, as in the name of Celestin Marius Rey in whose name the disputed marks are filed—against diverse merchants of the canton of Vaud.

By decree of May 23, 1905, the Indictment Tribunal of the canton of Vaud authorized, upon security being deposited, the seizure asked for by complainant, of
3183 the merchandise bearing counterfeit marks. The security required was deposited by the said complainant. The examining judge then proceeded with the seizure of the merchandise found with defendants and coming from the stock in liquidation of the Congregation; this merchandise differed from that manufactured by the Congregation itself only in that the labels of the bottles bore another printer's name.

However the Indictment Tribunal of the canton of Vaud, by decree of October 5, 1905, held that it was
3184 not necessary to proceed with the complementary inquiry begun by the examining judge—all the costs as well of the inquiry as of the said decree being charged to the complainant, and the civil party. This decree is based on the reasons as follows:

"In view of the considerations of fact brought out by the inquiry and especially the fact that the French State has become proprietor of the establishments of the Grande-Chartreuse;

"Whereas the defendants may have acted in good

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faith and as they can be reproached with no negligence or imprudence ;

"Whereas it furthermore appears that this matter is purely civil."

It is against this decree, communicated to the parties on October 17, that the counsel of Rey and Blanc announced, on October 14 already, that appeal for reversal would be taken at the Federal Tribunal in conformity with article 165 of the law on the judicial federal organization. By memorandum of November 3186
1, 1905, the appellants conclude that it may please the federal Court of Cassation to reverse and annul, not only the decree of non-suit rendered on October 5, 1905, by the Indictment Tribunal of the canton of Vaud in favor of J. E. Jaccard and associates, on complaints of the appellants, but also the decision of procedure relative to the deposit of a security, made by the same tribunal in its decree of May 23 preceding.

In his answer, E. Jaccard concluded as to the rejection of the appeal ; the other parties served did not 3187
answer.

Account will be taken, as far as is necessary, of the respective arguments of the parties in the judicial part of the present decree.

Deciding on these facts and considering the law :

1. It is not necessary to enter into the matter of the appeal, in so far as it is directed against the decision of the Indictment Tribunal of the canton of Vaud of May 23, 1905, relative to the deposit of security. The said decree does not in fact constitute a basic decision 3188
rendered by the cantonal tribunal any more so than it is really a refusal by the cantonal authority charged with deciding in the last instance on a rehearing to grant it (article 160 and 162 of the law on the O J F). Besides the appeal introduced in this relation seems to be tardy, and as not having been brought in the legal form, as it was not made within ten days from the communication of the decision objected to ; it is in fact in the memorandum in support of the main appeal that

3189 the grievance in question was formulated for the first time.

2. The competency of the penal authority of Vaud to prosecute the offence mentioned by the applicant did not form the object of the examination in the cantonal suit ; this competency cannot appear as doubtful as concerns the defendant Jaccard, who does not contest it in his answer. In this position, the Federal Tribunal, as an instance of reversal, has no reason
3190 whatever to examine into the competency of the penal judge. As the Federal Tribunal has as mission only to break the decision objected to, in so far as it may violate principles of the Federal right, and not to decide on the basis of the litigation, it does not enter within the cognizance of the Court of Cassation to examine whether the denounced refusal to prosecute could not be upheld for other reasons than those set forth in the decree of the indictment tribunal. It is in truth a question of the
3191 competency to officially examine by the preceding court, but if this court does not decide on a point in litigation which may form the object of an official examination, it is not incumbent upon the Court of Cassation to take up its consideration, as it does not come within the duty of this court—as would be the case if it were a question of civil appeal against a cantonal decree—to watch that the litigation be decided in all respects in a manner which does not at all violate the federal law, but only that the points *actually discussed*
3192 and decided by the cantonal court do not involve any violation of this kind. Nor does it appear from the decision objected to, that the affirmation of competency which it contains violates a principle of federal law, nor is it further seen, especially, whether this same decision involves a wrong application, as regards the place whence the merchandise was put into circulation, of article 24, litt c of the federal law of September 26, 1890, relating to the protection of factory and trade marks. Furthermore, supposing that it be necessary to enter into the matter of the question of

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competency, the latter would have to be given an affirmative solution. It is true that the Federal Tribunal considered the offense of putting into circulation in Switzerland as being perpetuated at the moment when the merchandise was sent (Official Record XXIX, 1, p. 347, Society of millers of the canton of Zurich against Untermühle Zoug), the simple deposit of the said merchandise in the warehouses of Lausanne should therefore not be considered as putting on sale publicly (see Kohler, Law on 3194
Trade Marks, p. 339). On the other hand, in this case, there is added to the fact of this deposit that of the offer of the merchandise to customers of the said place, to whom delivery is made from the warehouse, from which it follows that it is Lausanne which must be considered as the place from which it is put in circulation.

3. The capacity of the complainant Rey to act is incontestable, since even at present he appears as the 3195
proprietor, inscribed on the register, of the contested Swiss mark. It is therefore superfluous to examine the question of legitimacy of the complainant Blanc, that is whether the latter is right in taking the position of a defrauded buyer, in the meaning of article 27 of the Federal law, as concerns *all* the defendants, although it has not been established that he has bought of all of them. It is furthermore not contested that the defendants, or at least the greater part of them, have put on sale or in circulation a merchandise bearing a mark resembling to the point of deception 3196
one of those of the complainant C. M. Rey.

4. The cantonal instance at first based its decree of non-suit, that is its refusal to prosecute, on the reason that the French State had become proprietor of the establishments and the commerce of those entitled to the mark. The decree appealed from would seem to state by that that the right of complainant to the mark is lapsed; at any rate, this transfer to the French state of the commerce and the factory of the Grande Chartreuse is presented as a proof of the good faith

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of the accused. From this double point, it is a matter of questions of material federal right. That of determining whether it is a question of law that the right to an indigenous mark becomes void in the case where the proprietor of the mark had to renounce the exploitation of his commerce in foreign lands in consequence of the expropriation pronounced ; this likewise refers to the notion of fraud, as the federal tribunal has held in constant practice
3198 (see Official Records XX, p. 361, consideration 2, XXV, 1, p. 284, consideration 3, XXVI, 1, p. 109).

5. On the point of knowing whether the right of the complainant to the mark is become void, it is proper to remark as follows :

As a fact of a nature to establish such an extinction, it is only necessary to cite the judgment and decree of the tribunals of Grenoble of April 23, 1904, and July 19, 1905, declaring that Rey was the representative of the dissolved congregation, and finding that the busi-
3199 ness in cordials and elixirs of the Grande Chartreuse, comprising therein the marks, was a part of the assets of the dissolved congregation, of which Mr. Lecouturier is the receiver-administrator-sequestrator,—without it being necessary to look for the moment whether these judgments only referred to the rights relative to the marks in France, or whether they likewise concerned the same rights in foreign lands. That which the decree of October 5, 1905, from which appeal is taken, erroneously considers as a transfer to the
3200 French state of the proprietary rights to the establishments of the Grande Chartreuse, is in reality nothing but an attachment of the properties of the dissolved congregation, and consequently of its rights to the French marks, to the estate in liquidation. These judgments may be disregarded by the Swiss judges, for the very reason, mentioned by the appellants, that they emanate from a foreign judge, who has no competency to decide, with effect for another country, litigations concerning rights to marks filed in the latter. The action of the true proprietor

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of the mark against a deponent registered in Switzerland, but whose legitimacy of possession is attacked, may, also in Swiss law, be brought, if the deponent resides outside of Switzerland, at the domicile of the latter in a foreign country (see article 30 of the federal law on marks) and, in this case, the question whether the foreign judgment has, in Switzerland, the force of a decided matter is solved in conformity with the dispositions of international law in force relative to the execution of foreign judgments, thus, in this case, ac- 3202
cording to the convention of 1869 between Switzerland and France. However, in order that the change, brought about by the foreign judgment in the person of the holder of the mark, may become effective relative to third parties, it is necessary that this change be noted in the register of marks, upon examination of a legalized document, and made public as provided for, in regard to the transfer of marks, in articles 16 and 11 al. 2 of the aforecited federal law. In fact, there ex- 3203
ists no reason for restricting this obligation for inscription in the register, introduced with a view to the protection of third parties, in the cases of transfer effected in consequence of the disposal of the mark by the deponent. When the change in the register becomes necessary in consequence of the finding, by the judge, that the right to the mark belongs to a person other than the deponent, it is evidently likewise necessary to erase on the register the inscription in favor of the deponent and to substitute therefor the true proprietor of the mark. 3204

6. In the special case, the judgment of the Tribunal of Grenoble which attributes the right to the contested mark to the congregation of the Chartreux in liquidation has not at all the intention of declaring void, from the very beginning, the registration in favor ot the complainant, which would be a contradiction of all the French jurisprudence in this respect. On the contrary, it results from the numerous judgments rendered in France relative to the mark of the Chartreuse, that it is the member of the order inscribed on the register

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who possesses the right to the mark, either in his own name, or by the power conferred upon him by the body of his colleagues. In consequence of the dissolution of the congregation, this power naturally terminates, and the deponent inscribed must place the right to the mark into the estate in liquidation of the congregation. However, and in any case, a similar transfer following judicial sentence must, in order to become effective, be noted on the register and made
3206 public conformably to the dispositions of the article 16 aforesaid of the federal law of September 26, 1890; as long as these formalities have not been complied with, the new possessor of the mark—in this special case, the receiver of the estate—can claim no right to the said mark, by the terms of article 11 al. 2 of the same law, holding "that with regard to third parties, the transfer exercises its effects from its publication only." If follows from this, that the French judgment rendered in favor of the liquidation of the Congrega-
3207 tion of the Chartreux is powerless, by itself, to destroy the rights to the litigated marks, such as follow for the complainant and deponent Rey by their inscription in the register. The law does not only desire to authorize third parties *of good faith* to rely on the fact of the inscription on the register, but as concerns third parties, it is, in a general manner and without regard to the question of good faith, the inscription alone which is decisive; it is that which guarantees the exclusive right of the deponent to the mark,
3208 so long as the inscription in his favor has not been canceled on the register. Likewise the accused are not authorized to claim execution of the judgment rendered in favor of the receiver of the dissolved congregation; this judgment cannot become effective in their favor excepting by inscription in Switzerland on the register of the trade marks. It follows from this that, already for this reason, the forfeiture by the complainant, pronounced in France, relative to his right to the mark, can exercise no influence in the prosecution of the accused in Switzerland.

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7. To the proceedings is added the circumstance that the French decision in question has been made the subject of an appeal for reversal, the non-admissibility of which is not, at once, certain; now in a similar case the execution of the said judgment cannot, conformably with the practice of this tribunal, be granted (see decree of the Federal Tribunal in the cause of von Gonzenbach, of February 25, 1887, Official Records, XIII., p. 34, consideration 5). Furthermore, and beside this consideration, it is not 3210
established that the aforesaid decree of the Court of Appeals of Grenoble relates to the right to the complainant to the mark in Switzerland, nor whether, even if such were the case, rules of public right are not opposed to the execution of this judgment in Switzerland. The decree in question only wanted to declare the forfeiture by the complainant Rey of his rights to the mark, for the sole purpose of transferring them to the estate of the congregation in liquidation, and, so long as this transfer was not effected, 3211
Rey remained the holder of this mark. Now the rights to the marks, acquired in foreign lands, could not be included in the estate in liquidation in France, even if these rights, prior to the liquidation, had belonged exclusively to the congregation. The liquidation, begun in France conformably to law, did extend, in view of the purpose of this legal operation and the nature of things, only to the property of the congregation located in France. The dissolution of the congregation 3212
as a corporation, as also the liquidation of its holdings, does not generally affect its commercial capacity nor the properties of the congregation; it was only a question of the expatriation of the latter and to cause the disappearance from French territory of the mainmorts; it was for this purpose and to this end that the liquidation was to serve. If, in a similar case, the commercial undertaking is transferred to the state, it does not follow that the marks regularly inscribed in a foreign land must suffer the same fate, and if the de-

3213 cree of the Tribunal of Grenoble had as purpose—which is not shown by its tenor—to extend its effects to Switzerland, the execution thereof must be refused by application of Article 17, al. 3 of the Franco-Swiss Convention of 1869, for the reason that the laws of public right or the interests of public order in Switzerland are opposed to such a decision of a foreign jurisdiction receiving its execution in this country.

3214 8. The right of the complainant to the marks filed in Switzerland having hence to be recognized as existant, the fraudulent putting into circulation in Switzerland, by the accused, of merchandise bearing the same mark is punishable, even though the affixing of the said mark was not so in a foreign land. (See Kohler, op. cit. p. 455 and Decision of the Reichsgericht in Penal Matters of Sept. 30, 1881, Vol. 5, p. 105). In fact, the fact of putting into circulation of merchandise under the circumstances stated, constitutes, in itself, an independent offence. (See decree

3215 of the Federal Court of Cassation of June 8, 1899, in the cause of the Kasseler Hafercacaofabrik Hausen & Co. vs. Muller & Bernhard, Official Records, XXV. 1, p. 285, consideration 5).

9. The question of determining whether the accused knew that the merchandise put into circulation by them was provided with the infringing mark cannot be solved, as was done by the preceding court, in an identical manner with regard to them, and without taking into consideration the special position of each

3216 one of them. As the mark itself did not show, to non-initiated persons, any appreciable difference from the mark of the complainant, those alone among the accused can be accused of having known of the counterfeit, who knew that the merchandise did not come from the complainant, or from the Chartreux ; the other accused, on the contrary, who bought second or third hand, a merchandise the origin of which they were ignorant of, may justly be considered and treated as having dealt in good faith. It is therefore solely in regard to those among the accused who knew that the

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mark affixed to the merchandise put on sale by them, had been so by the receiver or his agents, that the question can be put of determining whether they have acted, not only with negligence, but fraudulently: relative to the latter, the existence of fraud can be denied only if it is admitted that they were in an excusable error as to the holder of the mark (complainant or receiver of the congregation). This is also the sole reason which could cause, and which in fact did determine the cantonal court to deny fraud, since, as 3218 concerns those of the accused who knew that the mark had not been affixed by the complainant, there is to be admitted, against them, the existence of all the elements constitutive of a fraudulent injury to the right to the mark. Their fraud could be denied only if they had been able, in good faith, to admit that in this instance, it was the estate in liquidation of the congregation which was the legitimate proprietor of the mark (compare decree of the federal Court of Cassation of March 29, 1904, in the 3219 cause of Gebruder Gegauf vs. Swiss Sewing Machine Factory, Official Records XXX. 1, p. 138, consideration 3). The existence of the good faith on the part of the aforesaid accused might strictly have been admitted, if the congregation itself had been registered in Switzerland as the proprietor of the mark; in that case, in fact, it might be asked whether the said accused could have admitted in good faith that the estate in liquidation of the congregation had become proprietor of the said mark in Switzerland. However, 3220 this good faith cannot be recognized when, as is the case in the present matter, the congregation as such has never appeared on the register as proprietor of the mark, and as hence there existed no reason to admit that the receiver of the estate of the congregation could be the holder of this mark. In order that a similar reason could be upheld, it would be necessary that the accused had admitted by error, and in good faith, that the attribution of the French tribunals, of

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the properties of the congregation to the estate in liquidation of the latter, had also effectively to extend to Switzerland. A similar error cannot, however, be taken into consideration, in the presence of the disposition already cited, of article 11, al. 2 of the federal law on trade marks. It follows from this that the accused had exclusively to take into account the inscription appearing on the register in Switzerland. The person acting contrary to this inscription can-

3222 not excuse himself by pretending that the right resulting from the latter had been transferred to another holder since, by the terms of article 11 al. 2 and 16 of the federal law, the transfer of a mark, in order to be valid, must itself be the object of an inscription on the register and of a publication, which did not occur in this particular case. The authorization accorded by the French judge to the receiver, under date of February 15, 1905, can-

3223 not serve as justification to the accused, since, on the one hand, the acts reproached to them are prior to this authorization, and as on the other hand, the latter cannot be the supplement for the inscription of the transfer of the mark on the Swiss register. Finally, it goes without saying that the accused cannot make use of the fact that they may have *believed* that the said transfer had been inscribed.

10. It follows from the above considerations that the refusal to proceed with the action instituted against those of the accused who knew that the merchandise

3224 put into circulation by them came from the liquidator of the dissolved congregation, is contrary to the law, and cannot be upheld. Such is first the case relative to Mess. Jaccard, Bechert, Manuel, Winandy, Wenger, Legeret, Blanchod, Jeanneret & Kues, Berchier, the latter eight having, according to the allegations of the complainant Rey bought the incriminating merchandise, either from Jaccard himself, or from Pascalis, general agent of Jaccard for Switzerland, or from one of their co-accused, whilst all knew that it was a mat-

ter of merchandise coming from the receiver, and not from the Chartreux monks. Wenger, especially, declared in the examination to have had the idea that the putting into circulation and on sale of the merchandise provided with the counterfeited mark constituted a sort of unloyal competition as regards the Chartreux Fathers. It does not appear from the file that Barraud, proprietor of the Kursaal at Lausanne knew, when he bought the Chartreuse from Bechert, that this cordial did not come from the Chartreuse Fathers; but he had knowledge of this fact later, upon the seizure of this merchandise in his establishment under date of May 6, 1905, which did not prevent him from continuing serving it, so that at the time of his examition of June 21 following, he no longer had any. 3225 3226

The accused Durand, of Montreux, does not either seem to have known, when he bought Chartreuse of his co-accused Legeret, that this merchandise had not been manufactured by the Chartreux Fathers, but he acknowledged, at the inquest, to have learned it in conversations with his colleagues, which did not prevent him putting it on sale. 3227

11. On the other hand, there does not exist against the accused Cottier, Tzaut-Serex and Freymond, any indication from which it might be inferred that they had knowledge of the origin of the merchandise; the first, proprietor of the Café des deux Gares, at Lausanne, received his Chartreuse from the old stock of Mr. Legeret; the second, grocer at Clarens, received it from Manuel frères, who billed it to him as real Chartreuse; Freymond, who formerly kept real Chartreuse, never had any other in stock; he has stopped selling this article. None of these three accused could see that the mark put on this merchandise differed from the one employed by the Chartreux Fathers, and nothing could make them suppose that their dealers supplied them with a merchandise other than that manufactured by the monks. 3228

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For these reasons,

The Penal Court of Cassation of the Federal Tribunal pronounces :

1. It did not enter into the matter of the appeal in so far as it is directed against the decision of the Indictment Tribunal of the Canton of Vaud, of May 23, 1905, authorizing the Examining Judge of the district of Lausanne to require security from the complainant, C. M. Rey.

3230 2. The decree of non-suit delivered by the Indictment Tribunal of the Canton of Vaud, under date of October 5, 1905, is declared void and of no effect as concerns all the accused with the exception of Mess. H. Cottier, of Lausanne, C. Tzaut-Serex of Clarens, and E. Freymond, of Vevey.

3. A court fee of 60 francs, as also the costs of copies and expenditures, amounting to 340 francs are jointly charged to the accused in regard to whom the decree of non-suit is annulled. The latter will fur-
3231 thermore pay to their adversary, also jointly, the sum of 50 francs as a matter of expense. All these costs and expenses will be borne, one half by J. E. Jaccard, representative at Paris, the other half, and in equal parts, by the other accused in regard to whom the decree of non-suit has been annulled.

4. The case is sent back to the cantonal authority, conformably to article 172 of the law on the federal judicial organization, in order that it be decided anew, in the sense of the preceding considerations.

3232 5. The present decree will be communicated by copy to the Indictment Tribunal of the Canton of Vaud and to each one of the parties.

Lausanne, February 13, 1906.

In the name of the Penal Court of Cassation of the Swiss Federal Tribunal :

The President :

(Signed) J. A. MONNIER

The Clerk :

(Signed) E. DE WEISS

(SEAL) Swiss Federal Tribunal.

(Signed) ANDRE WEISS.

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NEW YORK, August 8, 1907.

I, the undersigned, do hereby declare under oath that I have made the above translation of the copy of the decision of February 13, 1906, delivered in Switzerland, *in re* Rey *et al.* vs. Jaccard *et al.*, as also of the certificate of correction of June 28, 1906. My occupation has been that of translator in patent causes for more than fifteen years, during which time I have made a very large number of translations from French into English. I believe the above to be a correct and careful translation. 3234

HERMAN KUSTERER.

Sworn and subscribed to before me this ninth day of August, 1907.

(Signed) WM. LOWE,
(Notarial Seal.) Notary Public No. 184,
New York County.

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Complainants' Exhibit 29 (Weiss) Declaration for Correction of Swiss Decree (Complts'. Ex. 27).

LAUSANNE, June 28, 1906.

CHANCELRY OF THE SWISS FEDERAL TRIBUNAL. 3236

DECLARATION.

The Chancelry of the Swiss Federal Tribunal certifies that the decree delivered by the Penal Federal Court of Cassation, on February 13, 1906, in the cause pending between, on the one hand, Celestin Marius Rey, of Barcelona, and George Blanc, of Lausanne, and, on the other hand, J. E. Jaccard of Paris, and con-

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sorts (Chartreuse mark) contains an error of writing on page 9, eighth and ninth lines before the end of consideration 6, where the words "the complainants" should be replaced by the words "the accused."

The present declaration is delivered to lawyer Dr. J. Vallotton, of Lausanne, attorney-councillor of Mess. Rey and Blanc, to be attached to a copy of the aforesaid decree which is in a foreign country.

Lausanne, June 28, 1906.

3238 Chancelry of the Swiss Federal Tribunal.

(Signed) E. DE WEISS,
Federal Clerk.

(SEAL)

Swiss Federal Tribunal.
(Signed) ANDRÈ WEISS.

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IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

BAGLIN &c.	3242
vs.	In Equity, No. 8949.
CUSENIER CO.	

Stipulation.

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This Court having granted complainants' leave to offer as additional evidence in this cause authenticated copy of the Judgment of the Federal Court of Rio de Janeiro, Brazil, dated May 9, 1907, in a proceeding between Rey and Lecouturier, with translation ;

It is stipulated and agreed that the accompanying certified copy of this judgment and the translation thereof into English may be taken as having been duly offered in evidence in this cause, subject to defendant's objection for incompetency and irrelevancy, and 3244
for insufficiency of authentication and because it does not appear to have been a judicial proceeding or regular or that Lecouturier was heard or had opportunity to be heard, but on the contrary it appears to have been a default proceeding ;

It is further stipulated and agreed that the translation in question may be taken as a correct translation, subject however to correction by the original upon notice and proof ; and,

It is further stipulated and agreed that the transla-

3253 as a substitute for the national registrations previously effected by the complainant in the Chamber of Commerce of this city, September 15, 1892, and March 10, 1902, because it was not made by the owner or his representative; seventh, because, by virtue of a decree delivered by the Federal Supreme Court, the right of ownership of the marks used by the complainant, and duly registered in France and in Brazil, has already been recognized; eighth, because even in
3254 France the pretended rights of the defendant have not yet been definitely recognized; ninth, because the complainant has always protested for his industrial property rights; tenth, because, in view of the principles of the civil, international and private law, the defendant has no right to exploit, outside of France, the trade marks which serve to distinguish the products manufactured by the Carthusians, either by taking advantage of the registrations previously effected by the complainant and his predecessors, or by having them
3255 transferred to his name, or having registered anew the same marks already registered by the complainant for the same purpose, and which are in force by the terms of the Brazilian law. Having been accused and summoned before the Court by writ of citation duly executed and returned to the defendant, Henri Lecouturier, there was assigned to the same defendant the term of five days to plead his cause and this term having gone by and defendant being then in default, the complainant pleaded on folio 90.

3256 Having seen and duly examined all:

WHEREAS the complainant registered, filed and published in the Chamber of Commerce of this city, September 15, 1892, and March 10, 1902, the marks Nos. 320, 321, 322, 323, 324, 325, 326 and 1097 of which he is the owner, and which are designed to distinguish the cordials known by the name of "Chartreuse," the recipes for which belong to the Carthusian Monks. (Documents Nos. 1, 2, 3 and 4);

WHEREAS the marks Nos. 4782 to 4797 registered by the defendant in the International Bureau at Berne

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and filed in the Chamber of Commerce in this city, December 14, 1905 (document No. 5) violate the disposition of article 8, No. 5, of the law No. 1236 of September 24, 1904, which prohibits the registration of a mark which consists in the *reproduction of another mark already registered for the same purpose.*

Whereas it being a question of the right of ownership, the simultaneous existence of two registries of identical marks for the same purpose is inadmissible;

Whereas the filing of the registry made at Berne is 3258
also a violation of article 12 of the aforesaid law No. 1236, which says: "The mark may only be transferred with the kind of industry or commerce for which it has been adopted, making the proper record in the register upon examination of the authentic documents, and as this condition required for the operation of the transfer of complainant's marks has not been proven in the proceedings;

Whereas it is impossible to attribute to the defendant the quality of representative or legal attorney of 3259
the complainant and as therefore the registry effected in the International Bureau at Berne by the defendant in 1905 cannot be considered as a substitute for the national registries previously effected by the complainant and his legal predecessors from 1892 on, as appears from the terms of the First Article No. 3 of the Additional Act signed at Brussels December 14, 1900, and the observance of which was ordered in Brazil by decree No. 4858 of June 3, 1903;

Whereas the annulment of the registries effected by 3260
the complainant with priority proven by the files,—as regards the registration and the filing of the marks of the defendant—would be the abrogation of the right of the complainant which is guaranteed to him by the Brazilian law;

WHEREAS the right of ownership of the marks used by the complainant, registered in France and Brazil, is recognized by the decree as per certified copy annexed to folio 26 rear side.

WHEREAS the French law of July 1, 1901, a law of

3261 police and security, is only established for French territory, for persons and property there situated, and if it were not so, would clash with the rights of territorial sovereignty, and be against our constitution, which guarantees the right of ownership in all its fullness, and only admits expropriation for *public necessity or utility*, by previous indemnification (art. 72, paragraph 17) and which has established the regime of full religious freedom, worship and association (article 72,
3262 paragraphs 3, 7 and 28);

WHEREAS finally the right of complainant is upheld by article 8, No. 5, article 9, No. 2, and article 12 of the law No. 1236 and articles 5 and 6 of the regulation No. 5424 of January 10, 1905, the reasons and documents set forth in the proceedings, I hold the action well based in order to decree the annulment of the registration of the marks from No. 4782 to 4797 effected September 22, 1905, in the International Bureau at Berne and their respective filing in the
3263 Chamber of Commerce in this Capitol December 14, 1905, *as regards their effects in Brazil.* Costs in accordance with the law. To be served and to be published. Federal District May 9, 1907.

HENRIQUE VAZ PINTO COELHO.

(Here follow the usual certificates).

I, the undersigned, hereby declare, under oath, that I have made the above translation of the decision in
3264 Rey vs. Leconturier, of May 9, 1907, delivered in Rio de Janeiro. I am familiar with both the Portuguese and English languages and believe the above to be a careful and correct translation.

(Signed) DR. JOHN CROSS.

Subscribed and sworn to before me this 15th day of October, 1907.

(Signed) WM. LOWE,.

[SEAL.] Notary Public No. 184, New York County.

In the Circuit Court of the United States,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN vs. CUSENIER COMPANY.	In Equity No. 8949.

2

Answer.

(Filed April 17, 1905.)

3 The answer of Cusenier Company, the defendant, to the bill of complaint of Pere Alfredo Baglin, complainant.

This defendant now, and at all times hereafter, reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereunto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

this suit in his own name on behalf of himself and all of his alleged associates, and defendant craves the same benefit of this defense as if the same has been made by special plea to said bill; as to any other matter or thing in said paragraph II of said bill alleged, and not hereinabove expressly denied, this defendant has not, nor has any officer or agent of this defendant any knowledge or information enabling this defendant to admit or deny the same, and this defendant leaves said complainant to his proof thereof.

III.

Touching the alleged matters and things in the paragraph numbered III in said complainant's bill of complaint set forth, this defendant on information and belief denies that the manufacture of said cordial or liqueur known as "Chartreuse" is now, or at any time has been carried on at Tarragona in the Kingdom of Spain, or that the manufacture of said cordial or liqueur known as "Chartreuse" or of any cordial or liqueur made in accordance with any original recipe or formula for said liqueur or with any recipe or formula which is the exclusive property, or in the exclusive possession of, said alleged Order of Carthusian Monks, or of any cordial or liqueur whatsoever, is now, or at any time has been, carried on at Tarragona, in the Kingdom of Spain, by the said complainant and his alleged associates, or any of them, under the immediate supervision of said complainant, or otherwise: As to each and every other matter and thing in said bill alleged, and not hereinabove expressly denied, this defendant has not, nor has any officer or agent of this defendant, any knowledge or information enabling this defendant to admit

or deny the same, and as to such matters and things defendant leaves complainant to his proof.

IV.

Further answering on information and belief, and particularly as to the alleged matters and things set forth in the fourth paragraph of said complainant's bill of complaint, this defendant denies that the word "Chartreuse" or any of the alleged distinctive marks or symbols in said paragraph IV of said bill specified or referred to, is now or for some time has been used as alleged in said bill of complaint, exclusively for the purpose of designating cordial or liqueur manufactured by said complainant and his alleged associates, or by their predecessors in the alleged Order of Carthusian Monks; but alleges that the said name always has been associated with and indicative of the place of manufacture at La Grande Chartreuse, and the peculiar plants grown in that neighborhood which impart the aroma and flavor to said cordial or liqueur. As to each and every other matter and thing in said paragraph IV alleged, and not hereinabove expressly denied, this defendant has not, nor has any officer or agent of this defendant, any knowledge or information as enables this defendant to admit or deny the same, and defendant prays that complainant may be required to prove the same.

V.

Touching the alleged registrations of the name "Chartreuse" in the United States Patent Office as set forth in paragraph numbered V of said bill of complaint, or whether or not as alleged in said bill, said alleged registrations were caused by the

said alleged Order of Charthusian Monks, or whether or not Frere Marcel M. Grezier was, as alleged in said bill, then Procureur of said Order, or whether or not said Frere Grezier, on behalf of said Order, fully complied with all the laws of the United States in respect to the registration of trade-marks, this defendant does not know and is not informed, save by said bill, and does not admit the same, but leaves said complainant to his proof thereof: And this defendant denies that said alleged Order of Carthusian Monks has at this time the right to the exclusive possession and enjoyment or any right to the use of said trade-marks.

VI.

Further answering on information and belief, defendant denies all and singular the allegations contained in paragraph marked VI of said bill of complaint.

VII.

This defendant denies that it has, as alleged in said bill of complaint, imported from France into the United States at the port of New York, or otherwise, for sale or use, or has sold or used within the Southern District of New York or elsewhere in the United States, or the Territories thereof, large or any quantities of spurious Chartreuse liqueur or cordial, or any liqueurs or cordials bearing any trade-mark, labels, or other distinguishing mark of said complainant, or of his associates, or intended or calculated to deceive the public, or to cause the said liqueurs or cordials to be taken as and for the liqueurs or cordials made by the said complainant, and his associates. Defendant denies all and singular the alleged

wrongful acts wherewith it is by said bill of complaint charged; denies that by the alleged or any wrongful acts in said bill alleged, the defendant has received, or is receiving, large or any profits, or the said complainant, or his associates, or have been, or is or are being, damaged to the alleged, or to any extent, and denies irreparable or any injury to said complainant or his associates.

VIII.

Further answering on information and belief, this defendant avers that the persons holding themselves out as the Order of Carthusian Monks of the Convent La Grande Chartreuse and referred to as such in the bill of complaint did in or about the year 1903, wholly abandon the business of making and selling the liqueur properly known as "Chartreuse", and any and all right, title or claim to any and all trade-marks or labels previously used in connection with said business, and particularly did abandon the name "Chartreuse" and the other alleged marks and indicia specified or referred to in the said bill of complaint and therein alleged to belong to said complainant and his associates.

IX.

Further answering on information and belief, this defendant avers that in pursuance of an enactment of the Government of France known as the "Association Act", and dated July 1st, 1901, and in enforcement of said Act against the persons theretofore holding themselves out as the Order or Carthusian Monks of the Convent La Grande Chartreuse, and referred to in the bill of complaint in this cause, the said order became dissolved or

22 incompetent and on due proceedings had, a French tribunal, having jurisdiction in the premises over the said order and over the subject matter of said suit, to wit, the Civil Tribunal of First Instance at Grenoble within whose jurisdiction said Convent La Grande Chartreuse was and is situated, did, on or about March 31st, 1903, by decree or order of that date, appoint one Henri Lecouturier, an officer of the Civil Tribunal of the Seine, official receiver or liquidator of all the property and assets of said alleged Order of Carthusian Monks Convent La Grande Chartreuse, including the trade-marks or alleged rights set forth and referred
23 to in the bill of complaint and by said order or decree, and subsequent orders in pursuance thereof, said liquidator was invested with the property in and legal possession of the said business of making and selling the Chartreuse liqueur or cordial, together with all the property, products, raw material, factory, utensils, goodwill and trademarks, associated with, or appertaining to said business, including the trade-marks and alleged rights set forth and referred to in the bill of complaint, and that thereupon said liquidator entered upon, and took actual possession of, said property and said business, under the order and direction of said Court, and
24 in order to preserve the rights or alleged rights to trade-marks belonging to said business, and has since continued the said business and the manufacture and sale of said Chartreuse liqueur under that name and at the same place, and the use in connection with the said business and with the said Chartreuse liqueur or cordial by him so made and sold, of the mark "Chartreuse" and the other trade-marks, labels and indicia theretofore used in connection with said business and said cordial or liqueur. And further answering on information and belief this defendant avers that in the said

manufacture of said Chartreuse cordial by the said liquidator, the processes, recipes and formulæ theretofore used in the manufacture of the said Chartreuse liqueur, the same, or substantially the same have continued to be used and employed, and that the liqueur or cordial so made, furnished and sold to the public by said liquidator as "Chartreuse" and under the said trade-marks, labels, and indicia, has been and is in all substantial and material respects the same liqueur or cordial theretofore made and sold as "Chartreuse." And this defendant, on information and belief further avers, that all cordial or liqueur which it has imported into, or sold in this country as "Chartreuse" or under "Chartreuse" trade-marks or labels has been consigned to and received by it from the said liquidator of the "Chartreuse" business at La Grande Chartreuse, and has been, and is, the genuine "Chartreuse" there manufactured, as hereinbefore stated, by said official liquidator, and that this defendant is acting under the protection, authority, and rights of the said official liquidator or receiver of the said Chartreuse business.

All which statements and defences this defendant is ready to aver, maintain, and prove, as this Honorable Court shall direct, and it prays to be dismissed with its costs in this behalf sustained.

CUSENIER COMPANY,

[SEAL] Jules Aubry,

Vice President.

HOWSON & HOWSON,

Solicitors,

Frederic H. Betts,

Hubert Howson,

Charles Howson,

Of Counsel.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN

vs.

CUSENIER.

In Equity.

Testimony on behalf of defendant taken at American Consulate-General, City of Paris, Republic of France.

May 8, 1906.

PRESENT:

FRANK H. MASON, United States Consul-General at Paris, France, Commissioner:

MR. J. BONNET, Counsel for the Plaintiffs, assisted by Mr. Barbancey, private secretary, Mr. Pillet, Mr. Legras, private interpreter, Mr. Bachrich, private stenographer:

MR. EDMOND KELLY, Counsel for the Defendants, assisted by Mr. Pellerin, private secretary, Mr. Lecouturier, liquidator, and a private stenographer:

MR. C. DUCLUS, Official sworn French stenographer.

LEON HASSE, of No. 10 Rue de la Paix, Paris, France, butler, thirty-five years of age, having been

produced, sworn and examined on the part of the defendant, doth depose and say as follows: 31

Direct interrogatories by Mr. E. Kelly, representing the Defendant:

Q1. What is your name?

A Hasse.

Q2. What is your Christian name?

A. Léon.

Q3. What is your age?

A. Thirty-five years.

Q4. What is your residence?

A. 10, Rue de la Paix. 32

Q5. What is your occupation?

A. Butler.

Q6. What are precisely the duties of a butler?

A. Well, that is to say we attend to the wine, liqueurs, all that concerns drink.

Q7. Did you say where you were engaged as butler?

A. What?

Q8. Did you say where you were engaged as butler?

A. Not yet. At the Café de la Paix, 5 Place de l'Opéra.

Q9. Do you know the mark "La Chartreuse"? 33

A. Yes, sir, certainly.

Q10. Is there only one at present, or are there several?

A. There is but one.

Q11. There is but one mark?

A. There is but one mark.

Q12. By whom is Chartreuse manufactured at present?

A. It is made by the State here in France. That is to say there is the old one that which was made in France; the old is that of the State now.

34 Q13. Is Chartreuse manufactured by other persons?

A. No, sir.

Q14. Do you know a liqueur which is manufactured by the Carthusian Fathers?

A. Yes, sir, certainly.

Q15. When you offer Chartreuse manufactured by the State to your customers do they complain or not?

A. No.

Q16. Have you tasted the three Chartreuses that you have named; that is to say the old Chartreuse, the Chartreuse made by the State ond the Char-
35 truese made by the Carthusian Fathers?

A. Yes, I have had occasion to taste them.

Q17. Are you able to distinguish them?

A. I find little difference between that of the State and the old, which was made here in France; I find little difference.

Q18. Do you find a difference between the old Chartreuse and the Chartreuse now made by the Carthusian Fathers?

A. Yes, there is a difference; is is a littlestronger it is more "pommadé" it has not a strong taste like that which is made by the State.

36 Q19. Can you otherwise explain what you mean by the word "pommadé"?

A. It would leave an after taste that the new would not leave after you had drank it.

Q20. To what do you attribute the bouquet of the old Chartreuse?

A. There are plants, in the first place, which are picked here in France. To tell you exactly the names of the plants—

Q21. Do you know, at all, where these plants are gathered? The greater part of them?

A. Well, listen. No. I cannot tell you exactly where they gather those plants.

Cross interrogatories by Mr. J. Bonnet, representing the Plaintiffs: 37

XQ1. You are butler you said, at the Café de la Paix?

A. Yes, sir.

XQ2. Is it the butler in the café who offers the liqueurs?

A. To the customers who are in the restaurant it is me who offer them.

XQ3. Ah—to the clients who are in the restaurant?

A. Yes.

XQ4. You say to them: Will you have this or 38 that?

A. Quite so.

XQ5. Then it is not the customer who asks for it?

A. It may happen that the customer asks, but not very often. It may happen that the customer asks.

XQ6. The customer then when he goes into a café or a restaurant, in your particular restaurant, has this peculiarity, that he does not know what he is going to take?

A. Very often. 39

XQ7. He waits till the butler tells him?

A. It is for us, when we serve a customer, when we see that he has finished eating, we ask him what he would like as a liqueur.

XQ8. You ask him?

A. Yes.

XQ9. Then you do not offer him the liqueur?

A. If we have a liqueur, a new liqueur that we wish him to taste, we let him taste it, so that he can judge it, that we may know something about it.

XQ10. Then there are certain liqueurs which

40 you offer in preference instead of and in place of others?

A. That depends on what the client has taken, of how much money he has spent, that depends.

XQ11. Do you offer the liqueur of the Liquidator?

A. Now and then, when it is asked for, like the others. When we are asked for the Chartreuse we give that of the Liquidator, that of the State.

XQ12. When you are asked, you have just said. Then you do not offer it yourself?

A. When we are asked for the Chartreuse of the State. That often happens, when—

41 XQ13. You told me just now that you offered the liqueur?

A. Now and then, quite so.

XQ14. You said just now that it was you who offered the liqueur?

A. Very often, sir.

XQ15. You said: "the greater part of the time"?

A. The greater part of the time, quite so.

XQ16. Then it is an exception for the customer to ask for a liqueur?

A. That is to say— The greater number of our customers, we almost make them take what we like. But if we should be asked for one thing or

42 another we give it them, only if they ask for Chartreuse we give that of the State.

XQ17. Why do you give that of the State?

A. Because it is La Chartreuse—it is La Chartreuse.

XQ18. Have you received instructions to that effect?

A. Well— We have not received instructions, only as it is made here in France, as it belongs to the State now, we sell as Chartreuse that of the State.

XQ19. Have you not received instructions from your master to serve that Chartreuse?

A. No, sir; we are asked to serve a Chartreuse, 43
we give the Chartreuse of the State.

XQ20. A butler, in your café, does then as he likes?

A. No, sir, we try to satisfy our customers.

XQ21. But you told me just now that the customers do not ask for it?

A. What?

XQ22. And that it was you who proposed it to the customers?

A. The customers ask us for it and we propose it to the customers.

XQ23. You just now uttered an opinion about 44
the Chartreuses, and you told me that in your opinion the Chatreuse of the Liquidator was identically the same as the Chartreuse formerly made by the Carthusian Fathers in France?

A. Yes, sir.

XQ24. You also said that the Chartreuse manufactured at Tarragona differed from that formerly made by the Carthusian Fathers?

A. Yes, sir.

XQ25. That it was more "pommadé" you even told me?

A. Yes, sir.

XQ26. In a café is it the butler who is entrusted 45
with tasting.

A. We must give information; if we have one or several good customers we must try to please them, that they may be satisfied.

XQ27. Answer my question. In a café is it the butler who is intrusted with tasting?

A. Yes, sir, certainly.

XQ28. He is entrusted with tasting?

A. Yes, sir.

XQ29. Who entrusts you with tasting?

A. We have a master.

XQ30. Under what circumstances do you taste?

46 A. If a Chartreuse is found—Chartreuse as well as wine, if it has a taste of the cork, or another taste, we do not serve it to the customer.

XQ31. Then you begin by tasting all that you serve?

A. The greater part.

XQ32. About how many bottles do you serve per day?

A. That—to tell you exactly is not very easy, because we have several departments—

XQ33. About?

A. There is the restaurant, there is the café business, there is the bar; to tell you exactly what is
47 served per day I cannot tell you exactly.

XQ34. 500 bottles?

A. Per day, of liqueurs? No, that is a little too much.

XQ35. No, wines or liqueurs?

A. Put it on certain days some 500 bottles.

XQ36. You taste all those bottles?

A. The greater part of them, the fine wines, the wines from 3 francs, we taste them; otherwise the common wines, if we have not the time to taste them, we take the cork, we smell it, we put it in our pocket if we find it right; if it is doubtful we
48 taste it.

XQ37. You taste all the wines from 3 francs?

A. The greater part.

XQ38. Have you many wines at the Café de la Paix below three francs?

A. Not many.

XQ39. Then you taste about 500 bottles per day?

A. It is not enormous. We pour a drop into a glass, we do not fill the glass. It can be smelt; if there is nothing, if we do not smell anything there is no need to taste it. We make sure that our customer has something good.

XQ40. Conclusion. Every butler tastes all that he serves to his customers? 49

A. In great part.

XQ41. Does not a liqueur change its taste in proportion as it grows old?

A. Yes, there are certain liqueurs which mellow greatly, which change color a little, certainly there are some liqueurs which change a little bit.

XQ42. I speak of the taste, do they change in taste with age?

A. Not greatly, not much. If a bottle by chance remained uncorked, or remains over, but that does not happen at our place.

XQ43. Take for example a Marnier Curaçao, do you think that a bottle of Curaçao twenty years old, if we suppose that Marnier sold his Curaçao twenty years ago, has the same taste as that which leaves the factory? 50

A. No, it would improve a little bit, it would become a little mellower.

XQ44. Do those conditions apply to Chartreuse?

A. The Chartreuse is as I told you—the old and the new, that of the State, resemble each other a good deal as to taste. I have already made that remark to some clients. It has happened to me to let them taste both at table, to mix the glasses, and the customers do not perceive it, drink it, and could not tell me which was which. 51

XQ45. I put the following quesion to you: Chartreuse formerly made by the Carthusian Fathers, does it in aging change its taste, does it improve?

A. Not much.

XQ46. Then a Chartreuse twenty-five years old does not show any difference in taste in contrast with the Chartreuse of two or three years?

A. There would be very little, perhaps the least little bit, but not great.

XQ47. How do you explain that a bottle of Char-

52 treuse twenty-six years old sells for thirty and thirty-five francs the bottle, and that a Chartreuse of two or three years I still refer to that made by the Carthusian Fathers, sells for from eight to ten francs?

A. Yes, certainly, because there are connoisseurs who prefer that; being put on one side to keep it, that is what makes Chartreuse go up a little.

XQ48. There must be a difference, then?

A. But for a drink, let him come and ask for a Chartreuse and he will ask for that of the State.

XQ49. Have you any Chartreuse made by the Carthusian Fathers formerly?

53 A. Yes, sir.

XQ50. Have you some?

A. We have some, when we are asked for it we serve it.

XQ51. You told us just now that the liqueur made at the present time at Tarragona had a "pommadé" taste. Will you explain to me what is a "pommadé" taste?

A. Well, it will leave an after taste when you have swallowed it, a taste which the old Chartreuse did not leave, nor that of the State.

XQ52. What is this taste?

54 A. A taste— To give an exact idea, it is very difficult to explain the taste which it leaves.

XQ53. It is difficult?

A. Very difficult. That of the State does not leave that taste, it leaves a clearer taste when you have swallowed it.

XQ54. You cannot tell me then what is this taste that the liqueur from Tarragona leaves?

A. As I tell you, in order to define it— It is even very difficult.

LEON HASSE.

Session of Thursday, March 8th, 1906—continued. 55

Examination of Pierre Boutin.

PIERRE BOUTIN, of No. 10 Rue de la Paix, Paris, France, butler, aged twenty-nine years, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. E. Kelly, representing the defendant:

Q1. What is your name?

A. Pierre Boutin. 56

Q2. What is your age?

A. Twenty-nine years.

Q3. Where do you live?

A. No. 10 Rue de la Paix.

Q4. What is your occupation?

A. Butler.

Q5. Where are you butler?

A. At the Café de la Paix.

Q6. What are the duties of a butler?

A. The duties concern—we are only concerned, in the restaurant part, with the liquids—as far as concerns serving customers: wines, liqueurs, everything that is drink. 57

Q7. Do you know a liqueur that is called Chartreuse?

A. Yes, sir.

Q8. Is there more than one Chartreuse at present on the market?

A. At present we have the old Chartreuse, the Chartreuse of the State that is called the new Chartreuse, and the Chartreuse of Tarragona.

Q9. Have you tasted them?

A. Yes, sir.

Q10. Are you able to distinguish them or not?

58 A. Yes, possibly, yes.

Q11. How do you distinguish them?

A. In the first place because the new Chartreuse somewhat resembles the old.

Q12. When you say "the new Chartreuse"—by whom made?

A. The Chartreuse of the State, made by the State.

Q13. And the Chartreuse made by the Carthusian Fathers?

A. In the first place it is a little bit stronger in alcohol.

Q14. A little stronger in alcohol?

59 A. Stronger, from my point of view, stronger than the Chartreuse of the State, the new Chartreuse.

Q15. And as to taste?

A. It is at the same time a little more sirupy.

By Mr. Kelly: That it is—he said a little more pharmaceutical.

By. Mr. Bonnet: I protest; sirupy is not pharmaceutical.

Q16. Did you say pharmaceutical or not?

60 A. Yes.

By Mr. Bonnet: I appeal to the Commissioner, and I abide by what he will say. If he heard pharmaceutical—

By Mr. Kelly (to the Commissioner): Did the witness utter the word "pharmaceutical"?

By the Commissioner: I did not hear it, but it is possible that I missed it, because I do not understand all that he says.

By the Commissioner (to the Witness): What do you mean to say?

The Witness: More sugary, if you like, more "sippy," more sugary. 61

By the Commissioner: "Sippy."

The Witness: Yes.

Q17. I ask the witness a second time if he used the word "pharmaceutical," if he added the word "pharmaceutical" to his answer?

A. Yes, sir.

Q18. What do you understand by the word "pharmaceutical"?

A. I mean rather more sugary, rather more sippy, perhaps I expressed myself badly—

Q19. To what do you attribute the bouquet of Chartreuse? 62

A. It is due to the herbs of Fourvoirie, of the neighborhood.

By Mr. Kelly: I really dare not speak, he said "Fourvoirie."

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiffs:

XQ1. What does the butler do in a restaurant,in the resaurant where you are? 63

A. As I said just now the butler only attends to the drink, what concerns serving wines, liqueurs, beer, all that is the butler's work. And moreover the cellar, bottling.

XQ2. Do you taste all the wines and liqueurs that you give your customers?

A. Yes, sir.

XQ3. All?

A. Oh, nearly all, because—for a good reason; a liqueur, especially a new one, we do not serve to a customer without having tasted it ourselves; it

64 is necessary that we should be able to inform the customer if he asks for information.

XQ4. And the wines? Do you taste all the bottles before serving?

A. Yes, sir.

XQ5. You told us that the Chartreuse of Tarragona was more "siroxeuse" (sippy); what do you mean by that?

A. More sugary.

XQ6. Are there no other difference s between the old Chartreuse of the Carthusian Fathers and that of Tarragona.

A. I do not know of others—That is to say it
65 would leave a more—it would be a little stronger to the palate.

XQ7. You do not know of any other difference?

A. From the point of view of color there is also one.

XQ8. From the point of view of taste?

A. I do not know of any other.

XQ9. You told us that you attribute the particular bouquet of the Chartreuse which was formerly made by the Carthusian Fathers to the plants of Fourvoirie?

A. Yes, sir.

66 XQ10. Do you know what Fourvoirie is?

A. Mon Dieu! I have never been there.

XQ11. Do you know if there are plants at Fourvoirie?

A. But— according to what I have picked up from many people the Chartreuse made by the Carthusian Fathers, which was made—the aroma was given by the plants which came from Fourvoirie of the neighborhood—in fact from the région.

XQ12. Who told you that?

A. Ever so many persons, that I cannot name to you.

XQ13. By hearsay, then?

A. By hear-say, certainly.

PIERRE BOUTIN.

Session of Thursday, March 8th, 1906—Continued: 67

Examination of EMILE GALLERAND.

EMILE GALLERAND, of No. 24 Rue Bergére, butler, thirty-five years of age, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. E. Kelly, representing the defendant:

Q1. What is your name?

A. Emile Gallerand. 68

Q2. What is your age?

A. Thirty-five years.

Q3. Where do you live?

A. Rue Bergère, No. 24.

Q4. What is your profession?

A. Butler.

Q5. Where do you work, or where are you butler?

A. At the Café de la Paix.

Q6. What are the functions of a butler?

A. Of a butler? It is to serve the wines, the liqueurs to the customers, the beer; in a word all that they ask for. 69

Q7. Do you know a liqueur which is called Chartreuse?

A. Certainly.

Q8. Is there more than one Chartreuse on the market at the present time?

A. Chartreuse—there are several sorts; that is to say of real Chartreuse there is only that of the Government, at the present time, and the old Chartreuse of the Carthusians, which they made at the Grande Chartreuse.

70 Q9. Are there any others' Chartreuses on the market?

A. There is a liqueur which is called that of the Carthusian Fathers.

Q10. Have you tasted them?

A. Yes.

Q11. Are you able to distinguish them?

A. I am about able to distinguish them—At least it is necessary to know.

Q12. What distinction can you make between the three?

A. Between the three? I find the former the best, the old, still.

71 Q13. And then?

A. And then, that which the Government is manufacturing at the present time.

Q14. And the liqueur made by the Cartusian Fathers at Tarragona?

A. The Tarragona is good also, but, it is perhaps a little more—as concerns alcohol it is perhaps not so good.

Q15. Is there a great distinction or not between the old Chartreuse and the Chartreuse manufactured by the Government?

A. It would be pretty near it.

72 Q16. To what do you attribute the bouquet of the Chartreuse?

A. To the plants, and also to the alcohol.

Q17. When you say: "to the plants," what do you mean to say by that?

A. The plants that are harvested—at least—that they put in it—in the Chartreuse—the infusion, in any case, because it is only an infusion, from what I have been told.

By Mr. Bonnet: I beg pardon—I would like to have the answer repeated.

(The stenographer reads the preceding answer.) 73

By the Commissioner (to the witness): That was your answer?

The Witness: It was my answer.

Cross-interrogatories by Mr. J. Bonnet, reperesting the plaintiff:

XQ1. Do you taste all the liqueurs and all the wines that you serve?

A. A great part of them.

XQ2. You told us just now that the old liqueur was the best? 74

A. Yes.

XQ3. There is a difference then between the liqueur of the State and the old?

A. Yes, there is a little difference.

XQ4. You told us that the bouquet of the Chartreuse was due to the plants that were used?

A. Yes.

XQ5. How do you know it?

A. Because I have been told, even before, 15 years ago.

XQ6. It is by hearsay?

A. It is by hear-say, I have never seen it made. 75

Redirect-interrogatories by Mr. Kelly, representing the defendant:

RDQ1. You told us that there was a difference between the old Chartreuse and the Chartreuse manufactured by the State at the present time. Can you tell me how it is there is this difference?

A. Because liqueurs—like wine—always improve a little in the bottle.

RDQ2. Is this difference considerable?

A. Yes, rather.

RDQ3. Do you believe. Do your customers distin-

76 guish the difference? Do your customers make any complaints about the liqueur of the Liquidator?

A. No, up to the present they have not made any complaints.

Recross-interrogatories by Mr. J. Bonnet, representing the plaintiff:

RXQ1. You have told us that the difference between the liqueur of the Carthusian Fathers and the liqueur made at the present time by the Liquidator was due to the liqueur made formerly by the Carthusian Fathers being older?

77 A. Yes.

RXQ2. How do you know it?

A. That which is at the house is always older than that which we have received lately, as it has been at the house for one or two years.

DXQ3. Understand my question properly. How do you know that the difference is due to the age of the Chartreuse, made by the Carthusian Fathers?

A. Because I know that the liqueur—the liqueurs, at least, always improve in aging—by personal opinion, and when I have tasted it—even the customers—the same thing.

78 RXQ4. How do you know that the difference which exists between the two is only due to age, or to the difference in age?

A. Because it is my impression, to me personally, and it is the impression of the customers.

RXQ5. You have no other means of proving it?

A. No, I know that the Chartreuse has a difference with the new because it is finer, because it has more savour, because it is more melted.

RXQ6. Have you compared a Chartreuse made formerly by the Liquidator—made by the Liquidator with a Chartreuse made formerly by the Carthusian Fathers, but being only three on four years old?

A. I cannot know the difference of age. 79

RXQ7. You have never made this comparison?

A. Yes, on wines which were at the house, but I did not know what age they were exactly.

RXQ8. You are not in a position to tell us if the difference is due exclusively to age?

A. I should think, to age rather.

RXQ9. And on what do you rely to give such an opinion.

A. If a liqueur ages, in aging the alcohol improves, and the plants, all that mixes better with the sugar, brews better as it were.

RXQ10. I fully realize that a liqueur improves with age, but I ask you if you are in a position to 80 explain to me that the difference which you recognize to exist between the old Chartreuse and the Chartreuse of the Liquidator is due exclusively to age or to the difference in age?

A. I think it is only age.

RXQ11. But are you in a position to prove it to me?

A. To prove it?—

RXQ12. Otherwise that by an impression?

A. In my opinion—

XQ13. It is then only a personal impression?

A. But a personal impression, like that of cer- 81 tain customers whom I had to taste it.

XQ14. You told us a while ago that the liqueur of Tarragona was not so good with reference to alcohol. What do you mean?

A. Because the alcohol gets to the nose rather —it flies to the nose more than the other liqueur. By putting a glass under the nose, once it is uncorked, you smell—perhaps on remaining uncorked a little it would smell less.

XQ15. Therefore, in your opinion, the difference is due to the alcohol?

A. Is due to the alcohol.

EMILE GALLERAND.

89 Session of Thursday, March 15th, 1906, at 2 p. m.

Present: Parties as before.

EXAMINATION OF MR. BRAQUESSAC.

—— BRAQUESSAC, of No. 16, Rue Cambon, Paris, France, restraurant keeper, aged sixty years, having been produced, sworn and examined, on the part of the defendant, doth depose and say as follows:

83 Direct-interrogatories by Mr. E. Kelly, representing the defendant:

Q1. What is your name?
A. Braquessac.
Q2. Your age?
A. Sixty years.
Q3. You live—?
A. No. 16, Rue Cambon.
Q4. What is your profession?
A. Restaurant keeper.
Q5. What is the name of your restaurant?
84 A. Restaurant Voisin.
Q6. What class of customers have you?
A. Oh—about the most aristocratic in the world.
Q7. Can you give me the names of a few of your clients?
A. When the King of England comes to Paris, he comes sometimes to the house—the British ambassador—many Americans—this morning I had the two families Vanderbilt— When the King of the Belgians comes to Paris he comes almost always to the house.

Q8. Do you know a liqueur which is called Char- 85
treuse?

A. Yes.

Q9. Is there more than one Chartreuse on the market at the present time in Paris?

A. At the present time there are three: There is the old, there is that which is made here in France, and there is that which comes from Spain, I think. Those are the three which I know.

Q10. Have you tasted them?

A. Yes.

Q11. Which, of the Chartreuses manufactured in France and in Spain today, resembles most the Chartreuse manufactured formerly by the Carthu- 86
sian Fathers in France?

A. Myself, I find that it is that which is manufactured today in France which has the most resemblance to the old.

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiff:

XQ1. You have told us just now about your personal opinion on the Chartreuses?

A. Yes.

XQ2. And you have told us that the Chartreuse 87
which approaches nearest to the old—

A. In my opinion— Now—

XQ3. In your opinion, was that which is made at the present time in France?

A. in France— The bottles are absolutely the same bottles as the old.

XQ4. To avoid any confusion, I will say: That which is manufactured by the Liquidator?

A. I know nothing about it, I do not know if it is manufactured— I do not even trouble myself about it— I do not know who manufactures it.

XQ5. You say then that this liqueur which is

made at the present time in France, which is sold under the same makes—

A. The bottle is the same.

XQ6. —is that which most resembles the old Chartreuse?

A. Yes.

XQ7. What difference do you find between the liqueur which is made at the present time in France with the old labels, and the liquor which was made formerly in France with these same labels?

A. I find that that resembles more the old than that which is said to come to us from the Carthusians who are in Spain. I think— I do not know—

XQ8. Understand well my question—

A. I am listening to you.

XQ9. I ask you what difference you make between the liqueur which is made at the present time in France and that which was made formerly in France?

A. I tell you I find it resembles more the old than that of the Carthusians, which they make at the present time.

XQ10. Is there a difference between the Chartreuse made today in France and that which was made formerly?

A. Yes.

XQ11. Could you tell me, of the three Chartreuses which you know: that which was made formerly—

The Witness: Yes.

By Mr. Bonnet: —that which is made at present in France—

The Witness: Yes.

By Mr. Bonnet: —and that which is made at the present time at Tarragona, in Spain—

The Witness: Yes. 91

By Mr. Bonnet: —which is that which is the most alcoholic?

A. Oh, I know nothing about it. It would be necessary to weigh them for that.

XQ12. You do not know that which is the most syrupy?

A. No.

(Signature Waived.)

Session of Thursday, March 15th, 1906—continued at 2:30 p. m. 92

Present: Parties as before.

Examination of Mr. WILLIAM H. GARRETT.

Mr. George E. Light, having been duly sworn as stenographer, Mr. Bonnet requests that his interpreter, Mr. Legras, be duly sworn as the official interpreter, the testimony being given in English, and Mr. Bonnet not understanding that language. 93

Mr. Kelly consents, but states that he sees no use in Mr. Legras being sworn.

Mr. Legras takes oath as interpreter for Mr. Bonnet.

WILLIAM H. GARRETT, of Nos. 6 and 7 St. Mary-at-Hill, London, England, temporarily sojourning in Paris, France, aged 46 years and upwards, wine and spirit merchant in the said city of London, England, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

94 Direct-interrogatories by Mr. Edmond Kelly, representing the defendants:

Q1. What is your name, age, business and place of residence?

A. William G. Garrett, 46 years of age and upwards; I am a wine and spirit agent in London, England.

Q2. What is your address in London?

A. Nos. 6 and 7, St. Mary-at-Hill, London.

Q3. How long have you been in the wine and spirit business?

A. About twenty-nine years and over.

95 Q4. Are you familiar with liqueurs by the name of Chartreuse?

A. Yes.

Q5. How long have you been familiar with this liqueur?

A. Since about 1878.

Q6. Have you dealt in it since that time?

A. Since 1882.

Q7. Are you or are you not the agent of the Liquidator to-day?

A. I am.

Q8. Since when?

96 A. I think it is in September or October, 1904.

Q9. Is it part of your business to test wine and liqueurs?

A. Yes.

Q10. Is there more than one Chartreuse on the market to-day?

A. Yes, two.

Q11. What are they?

A. What is known as the old Chartreuse and that at present sold by the Liquidator.

Q12. Is there any other liqueur purporting to be Chartreuse on the market to-day?

A. No.

Q13. Is there any other liqueur on the market to-day having approximately the flavor of Chartreuse? 97

A. Yes.

Q14. How is that liqueur designated?

A. The liqueur of the Pères Chartreux.

Q15. What are the circumstances under which those three liqueurs are to-day on the market in England?

A. I do not follow your question.

By Mr. Kelly (to stenographer): Repeat the question. 98

The question is read by the stenogrepher.

The Witness: I am afraid I do not understand the question. There is the liqueur sold by the Liquidator and the liqueur sold by the Union Agricola of Tarragona.

Q16. Do you know the conditions under which the Liquidator is manufacturing Chartreuse to-day?

A. So far as I know at the Monastery, under the same conditions as formely.

Q17. Under what conditions is the liqueur being manufactured by the Pères Chartreux? 99

A. So far as I know by the Union Agricola at Tarragona.

Q18. Have you tasted these three liqueurs?

A. I have.

Q19. Will you describe the relations they bear to one another?

A. In my opinion the liqueur sold by the Liquidator resembles very closely the liqueur of the Carthusians, the old liqueur.

Q20. What of the liqueur manufactured by the Union Agricola at Tarragona?

100 A. In my opinion it does not so closely resemble the old Chartreuse as that shipped by the Liquidator.

Q21. Has the sale of the Chartreuse manufactured by the Liquidator been interrupted in England, or have you been able to sell it continuously from 1904 to the present day?

A. The sale of the liqueur of the Liquidator was interrupted from November, 1904, until the end of May or the beginning of June, 1905.

Q22. What was the occasion of this interruption?

101 A. I was informed by a solicitor of His Majesty's Customs that a stop, if you understand that, had been put upon the delivery of this liqueur shipped to me by the Liquidator, owing to the action of Messrs. Rivière and Company.

Q23. What took place subsequently to this step or seisure?

A. The solicitor in London to the Liquidator applied to the Registrar of Trade Marks for the marks to be transferred into his name. That was done and the Customs informed us that the stop had been taken off.

Q24. Were you then free to sell once more this
102 liqueur in England?

A. I was.

Q25. About how much of the Liquidator's Chartreuse have you sold since then?

A. I should say that I do not know, as I did not prepare for being called to give evidence before this Commission when I left London, so my answers must be taken as being to the best of my memory. Since July, 1905, I believe about 1,200 cases. That is without any advertising of any kind.

Q26. Do you know who is the agent of the Carthusian Fathers in London now?

A. Yes.

Q27. What is his name? 103

A. Mr. Rivière.

Q28. Mr. Rivière has testified before the present Commissioner that the public to-day prefer the Chartreuse manufactured by the Pères Chartreux to that manufactured by Mr. Lecouturier. Is this your experience?

A. It is not.

Q29. What reason have you for supposing that the English public to-day does not prefer the Chartreuse manufactured by the Pères Chartreux to that manufactured by the Liquidator?

A. From the fact, as I stated before, that without any advertising I receive orders from my various customers, and from the appreciation shown of the samples of the Chartreuse of the Liquidator which I have sent to my various customers. 104

Q30. You say without any advertising. Are you or are you not advertising the Chartreuse manufactured by the Liquidator?

A. No more than the fact of quoting the Chartreuse in the trade list of liqueurs which one sends out to one's customers.

Q31. Have any of your customers objected to liqueur manufactured by the Liquidator on the ground that it differed in quality or perfume to that manufactured by the monks at the Grande Chartreuse? 105

A. Not one.

Q32. Have any of your customers taken the trouble to consult experts as to the relative value of the Chartreuse manufactured by the Liquidator and that now manufactured by the Union Agricola at Tarragona?

A. Yes.

Q33. Can you give me the name of such?

A. Yes, Messrs. Spiers & Pond.

106 Q34. What did they do in this way?

A. The three liqueurs, that is the old liqueur, the liqueur shipped by the Liquidator and that shipped by the Union Agricola, were placed on a table covered, and the clerk was directed to take so much from each bottle and place it on the table and some six people tasted the liqueurs, blindfolded as it were; that is they did not know which Chartreuse was in each bottle, and the result was given by each putting his remarks on a piece of paper up to six, that is they put the number they liked best on a piece of paper.

107 Q35. What were these six bottles presented for this experiment?

A. The yellow liqueur and the green liqueur; that sold by the Liquidator and that sold by the Union Agricola.

Q36. Two bottles of each?

A. One bottle of each of the three kinds, green and yellow.

Q37. I think your answer in not quite clear. Will you state just what all the bottles contained?

A. A bottle of the green and a bottle of the yellow of the old Chartreuse; a bottle of green and a bottle of yellow of the Chartreuse shipped by the
108 Liquidator; a bottle of green and a bottle of yellow of that shipped by the Union Agricola.

Q38. What was the result of the experiment?

A. The result was that the liqueur shipped by the Liquidator was found to more closely resemble the old Chartreuse than that shipped by the Union Agricola; I believe unanimously.

Q39. Did you or did you not get any order form Messrs. Spiers & Pond as a result of this experiment?

A. Yes.

Q40. Do you know whether Spiers & Pond consulted an expert on this occasion?

A. Yes, he was one of the six people tasting. 109

Q41. What was his name?

A. Mr. Parker.

Q42. Do you know whether any other customer of yours had a similar experiment?

A. Yes— I do not say exactly similar.

Q43. What other customer made a somewhat similar experiment?

A. The Great Eastern Hotel and Railway Company.

Q44. Did you or did you not get an order as the result of the experiment from the Great Eastern Hotel and Railway Company? 110

A. Yes.

Q45. To what do you attribute the perfume of the Chartreuse?

A. To the herbs.

Q46. What plants?

A. The herbs used in the infusion in making the liqueur.

Q47. Have you known of any imitations of the mark since you have been the agent of the Liquidator?

A. Yes.

Q48. What imitation do you know of?

A. The imitation of Mr. Boitel. 111

Q49. What were the particulars of the imitation?

A. Complete imitation as regards the bottle, label, cork, and in fact I may say, with the exception of the liqueur inside the bottle, an exact imitation.

Q50. Did you do anything in consequence of this imitation?

A. We prosecuted.

Q51. Did you secure his conviction?

A. Yes; the man got eighteen month hard labor.

112 Q52. Do you know of any other imitation in England?

A. Not brought to my knowledge.

Q53. Mr. Rivière has testified that you circulated a report that there was a large stock of the old Chartreuse found by the Liquidator and that you offered this alleged stock of old Chartreuse for sale. Is it true?

A. I never circulated the report that there was large stock.

Q54. Did you ever say that there was any stock of old Chartreuse?

113 A. I said I understood there was a stock of some 300 or 400 cases, and I told perhaps four or five people, not more.

Q55. Did you ever sell any of this stock?

A. No; I have taken orders for it but I never sold any.

Q56. Why did you not fill the orders?

A. Because before doing so I wrote the Monastery to enquire if the liqueur had entirely been made by the monks.

Q57. What answer did you receive?

A. I was told not entirely and I cancelled the orders.

114 Q58. Were you told what stock had been found by the Liquidator?

A. No; I was not told.

Cross-interrogatories by Mr. Bonnet, representing the plaintiffs:

XQ1. Do you understand French?

A. A little.

XQ2. Are you not the managing Director of the firm of Geo. Idle, Chapman & Co., Limited?

A. I am.

XQ3. Are you personally the agent for the Liqui-

dator, or is it your firm of Geo. Idle, Chapman & Co., Ltd? 115

A. I am.

XQ4. Before you were the agent for the Liquidator have you not sold the Monk's liqueur, the old liqueur?

A. Yes.

XQ5. Up to what time did you sell that liqueur of the monks, the old liqueur?

A. I am selling it now; I am holding a stock of it now.

XQ6. Do you know the name of the house which was the agent for the Carthusian Fathers in England before Messrs. Rivière & Co? 116

A. Perfectly.

XQ7. What was the name of this house?

A. W. Doyle & Company.

XQ8. Do you know a Mr. Mumford?

A. Yes.

XQ9. Do you know that this gentleman, Mr. Munford, was formerly in the employ of Messrs. W. Doyle & Co?

A. I believe he was formerly in his employ and at the time of Mr. Doyle's death was his partner.

XQ10. Do you know that at the time of the death of Mr. Doyle, Mr. Mumford applied for the agency 117 of the Carthusians, and that this agency was refused him?

A. I did not know it.

XQ11. Have you taken Mr. Mumford into your employ?

A. I have.

XQ12. At what time did you take Mr. Mumford into your employ?

A. I do not know exactly; perhaps six or seven months; it is not a great while.

XQ13. Is Mr. Mumford still in your employ?

A. Yes.

118 XQ14. At what time did you open negotiations with the Liquidator to obtain the agency for his liqueur?

A. I should think it must have been in August, 1904, it may have been a month or two before—it may have been June or July.

XQ15. At what time did the Liquidator appoint you as his agent?

A. I think September, 1904.

XQ16. Are you not at the present time sued, at the same time as Mr. Lecouturier and the firm of Geo. Idle, Chapman & Co. Ltd., by Mr. Rey and Mr. Herbault both in their own names and on
119 behalf of the other members of the Carthusian Order for the sales effected by you of the liqueur of the Liquidator under the marks which had been filed in the name of Mr. Rey?

A. I do not know as to the particulars of the names you give me, but there is an action pending.

XQ17. Do you know at what time the English marks of Mr. Rey have been filed in the name of Mr. Lecouturier, acting as Receiver of the Order of the Carthusians?

A. I believe the marks were transferred to the
120 name of Mr. Lecouturier in May, 1905.

XQ18. Do you know on what date Mr. Lecouturier asked for the English marks to be transferred to his name?

A. I am not his solicitor.

XQ19. Do you know whether, in order to obtain the transfer to his name, to get the English Registrar to transfer the marks to his name, the Liquidator has shown the Registrar an order of the 15th of February, 1905, decreed by the Grenoble Tribunal, and authorizing Mr. Lecouturier to have the foreign marks transferred to his name, and especially the English marks?

A. I have no knowledge. 121

XQ20. Do you know or do you not know that this order of the 15th of February, 1905, has been cancelled by a Decree of the Grenoble Court of Appeal dated December 12th, 1905?

A. Not to my knowledge; I saw it in the papers.

XQ21. How is it, in your statement of defence filed September 20th, 1905, in the suit instituted against you by the Carthusian Fathers before the High Court of Justice, Chancery Division, you based your defence partly on this order of the 15th of February, 1905, when you knew, or should have known, that this order had been cancelled a week previous by the Court of Appeal of Grenoble? 122

A. I merely say I did not know it when this statement of defence was made.

XQ22. From whom did you obtain the information which you had need of, to write the circulars which you sent to the English trade regarding the liqueur of the Liquidator?

A. What circulars are you referring to?

XQ23. The circulars in general. I am speaking of all, but more particularly those of July, 1905, and August, 1905?

A. You must particularize the statements you refer to. 123

XQ23. Do you know this circular?

(Mr. Bonnet hands a paper to the witness).

A. Yes.

XQ24. Do you admit having sent round this circular to your customers?

A. I do.

XQ25. From whom did you get the information to write this circular?

A. There is no special information required to write that circular. Until you particularize what part of the circular you refer to I cannot say.

124 XQ26. I will be more precise. In that circular you say: "These products, the Liquidator's, we are authorized to state, are absolutely of the same quality as formerly." Who authorized you to make such an affirmation?

A. I was so informed, and having tasted I agreed with the information.

XQ27. Who informed you?

A. I cannot say without referring to my letters. I believe it is in my letters, but I cannot say without reading the letters. It may have been when I was over here.

XQ28. Did you get that information from Mr.
125 Lecouturier?

A. I have just said I do not know; I would have told you if I had known immediately.

XQ29. In your circular of July, 1905, you have quoted a letter which Mr. Lecouturier had inserted in the French paper "Le Temps," of 20th September, 1904, drawing the attention of your customers to this letter which appeared in the "Temps." That letter says:

"From the numerous statements made by the
" 'Pères Chartreux' as well as the many judgments
"obtained by them, it appears that the liqueur of
126 "the Chartreux can only actually be made at the
"Grande Chartreuse. As the Pères Chartreux
"have asserted so often, and with so much strength,
"the herbs gathered on this unique estate absorb
"from the ground special flavors and qualities,
"which flavors and qualities such herbs alone can
"transmit to the liqueur (Chartreuse.)" Do you know or did you know the judicial orders to which the letter refers?

By the Witness: May I have the circular again?

The Commissioner hands the witness the circular dated July, 1905, previously produced by Mr. Bonnet. 127

A. I made the statement because I thought, as I said, it thoroughly established the legal and commercial position of the Liquidator. It also confirmed the legend, as you may call it which I have heard that there was only one place where Chartreuse could be made; from statements made during my experiences as a wine merchant of 25 years standing it was owing to the herbs and the old brandy used by the monks that their liqueur was so good and well appreciated. In the course of my business I have tasted other liqueurs said to be as good as Chartreuse but which in comparison with Chartreuse I have not found so good because of the herbs, I have no doubt, from which the infusion is made. What I said in that letter confirms what I had heard years and years before. 128

XQ30. What you have quoted in your letter you only got from simple hear-say?

A. What do you mean?

XQ31. The statements to which you refer, did you hear them yourself?

A. I read this letter and, as I said just now, it confirmed what had been said to me personally years ago. 129

XQ32. By whom?

A. I cannot recall for the moment, but probably the then agent of the Carthusians.

XQ33. You cannot be more precise?

A. I cannot.

XQ34. You do not know the judicial decisions which are alluded to in the "Temps" letter?

A. I merely know what is stated in the letter.

XQ35. In which letter?

130 A. The letter addressed to the editor of "Le Temps."

XQ36. What are the judicial decisions which are alluded to in that "Temps" letter?

A. I have stated I do not know.

XQ37. In that letter to the "Temps" mention is also made of statements of the "Père Chartreux." When were these statements made?

A. I have told you in my former answer that such statements would be made by the Agent of the Carthusian Fathers, and consequently by themselves, as they would not make statements which were not true.

131 XQ38. Who are those agents?

A. What do you mean?

XQ39. Who are the agents who made these statements?

A. I have told you; the only agent I have known is Mr. Doyle, and Mr. Mumford who was his partner, I believe at the time of Mr. Doyle's death, as I have told you. And what I have told you was, as far as I knew, a matter of common knowledge.

XQ40. Then from statements to you by persons simply in the employ of the "Pères Chartreux" you have published the letter in which you attribute

132 these statements to the Carthusian Fathers themselves.

A. I beg your pardon. The letter as here (pointing to the circular of July, 1905), as I said before, confirms the statements which I had heard years before.

XQ41. I note that you are not answering my question?

A. I am to the best of my ability.

(The circular dated July, 1905, is signed by the witness for identification, and annexed to the Commission marked Exhibit No. 16.)

XQ42. Here is another circular dated August 14th, 1905. Do you know it? 133

A. Yes.

XQ43. Does it come from you?

A. Yes.

XQ44. In that circular you say: "The Chartreux "Monks helped by a thoroughly experienced lay "staff, succeeded in bringing the Liqueur to the "present high standard of excellence, and it is this "standard that is maintained at the Grande "Chartreuse by the same process, with a great "part of the old lay staff and with perfected "machinery and above all with the same constitu- "ent ingredients." Is the process used by Mr. Lecouturier for the making of the liqueur, according to the statements quoted in your circular, the same as that which the Carthusian Fathers used formerly? 134

A. I have no personal knowledge.

XQ44. Why did you affirm it in your circular?

A. Which sentence do you refer to in the circular?

XQ45. The sentence which has been read to you at this moment?

(The Circular dated August 14th, 1905, is handed to the witness by Mr. Bonnet). It is signed by the witness and annexed to the Commission marked "Exhibit No. 17." 135

A. This circular must have been drawn up from information given me, but, as I have said, I have not my books here.

XQ46. Who supplied you with this information?

A. From the Monastery, I believe, I have not my letters here but I believe so.

XQ47. What do you mean by the Monastery?

A. From the Liquidator, or his representative, or whoever is in possession of the Monastery.

136 XQ48. You therefore made these statements only from what you heard from the agent of the Liquidator or from the Liquidator himself?

A. To the best of my belief, yes.

XQ49. In that same circular you state that Mr. Lecouturier was helped by a great part of the old staff of the monks. Who told you so?

A. I give you the same answer as I did to the former question.

XQ50. You therefore sent out a circular containing such grave statements without enquiring about them?

A. That is a matter of opinion.

137 XQ51. In this same circular you state: "Those "constituent ingredients (special herbs gathered ex- "clusively on the Estate of the Grande Chartreuse "belonging to the French Government and of which "estate the monks have not been owners but simply "tenants since the time of the Revolution of 1793) "are solely reserved for the manufacture of the "liqueur Chartreuse—"

You declare in this way that the group of the Grande Chartreuse belongs to the French Government. On what basis do you make such a declaration?

138 A. My reply is the same as to the last question.

XQ51a. Are you or are you not aware that the group of the Grande Chartreuse is only the property of the French Government for a very small part?

A. I am not aware of it.

XQ52. You are not aware perhaps that the group of the Grande Chartreuse comprises 48,000 hectares and that only 6,500 hectares belong to the State?

A. I have no knowledge of that.

XQ53. Do you know that Mr. Lecouturier is not even a tenant of all these 6,500 hectares?

By Mr. Kelly: I object as misstating the facts. 139

XQ54. In this same circular you state: "The "monks, up to the present time, have always asserted as a positive fact that: The Chartreuse can only "be made at the Grande Chartreuse—" What basis have you for making such a statement?

A. You have asked the question and I can only refer you to my preceding reply.

XQ55. To give more publicity to this circular of 14th August, 1905, have you not had it inserted in the issue of 8th of September, 1905, No. 695, pages 698 and 699 of the English Review "Ridley's Wine & Spirit Trade Circular?" 140

A. As a matter of usual custom all agents, of any kind, when they send a circular to the trade always send a copy to the editor of the trade papers at the same time.

XQ56. Do you know this paper as being the one?

(Mr. Bonnet hands witness a copy of Ridley's Wine & Spirit Trade Circular.")

A. Yes.

141

(The paper is signed by the witness for identification and annexed to the Commission marked Exhibit No. 18.)

XQ57. Is it customary in commercial affairs to affirm facts so important, as you have affirmed in your circular, without any preliminary enquiry on your part?

A. Who said I made no preliminary enquiry?

XQ58. To the questions that I have just been putting to you, so as to get at the origin of your in-

142 formation, you answer me in such a way that I am justified in putting to you this last question.

A. Will you give me my answer?

(The stenographer reads over preceding questions and answers to No. 40.)

XQ59. After hearing the various answers which were given by you previously have you anything to add to the last answer you have given?

A. Which last answer?

(Question No. 57 is here repeated.)

XQ60. Have you anything to add to the answer you gave last?

143 A. To which I answer: "Which answer?" and you say this one.

XQ61. In view of the attitude you are taking after having the question read twice to you I cannot begin again to put the same question. I have had it read over twice and to my thinking it is enough.

A. I cannot answer a question I do not understand.

XQ62. Have you not as early as 1904 and beginning of 1905 stated to English business people that a large quantity, several hundreds of cases of liqueur, had been left behind at the Convent of the

144 Grande Chartreuse by the monks when they were expelled?

A. I have told you exactly what I did say and I refer you to my answer.

XQ63. Do you know the firm of Chaplin & Co., of London?

A. Yes.

XQ64. Have you, yes or no, sold firm to that house fifty cases of Chartreuse which you declared was part of the large stock found at the Monastery of the Grande Chartreuse after the monks leaving it?

A. I never made any declaration that there was a large stock. 145

XQ65. Have you not declared that there were several hundreds of cases left at the Monastery by the monks?

A. I have said that I was informed that there were several hundreds of cases.

XQ66. Did you not sell firm fifty cases to Messrs. Chaplin & Co?

A. No. Messrs. Chaplin & Co. came to me asking if I could give them any information for their circular about Chartreuse, and it is possible I may have told them of the existence of the information I had been given, and they may have asked me for fifty cases. I never went to them and offered them any single case of Chartreuse. 146

XQ67. Then you deny having sold them fifty cases of Chartreuse that were coming from a large stock left at the Convent by the monks after their departure?

A. I received an order for them: I could not sell them until I had the stock.

XQ68. Yes or no, was the sale made to Messrs. Chaplin & Co. definite?

A. No.

XQ69. Have you any knowledge of a letter written by Mr. Rivière on the 1st February, 1905, in the "Wine & Spirit Gazette (Harper's Weekly)" of Feb. 4th, 1905? 147

(Mr Bonnet hands the paper to the witness, who reads the letter.)

A. I have seen it.

XQ70. The letter reads as follows: "Grande Char-"treuse. To the editor of Wine & Spirit Gazette. "Dear Sir: Statements having been circulated on "the market to the effect that a large quantity of "liqueurs of the Grande Chartreuse was found at

148 "the Monastery, or at the distillery of the monks "at Fourvoirie (near the Monastery of the Grande "Chartreuse) at the time the Liquidator took pos- "session of the properties of the Chartreux Monks "in France, we wish to point out that such state- "ments are erroneous and misleading. We have "a certified copy of the original inventory, which "was made between the parties at the time that the "Liquidator, acting on behalf of the French Gov- "ernment, took possession of the said properties; "this inventory showing that all the merchandise "found after the departure of the monks was 16,- "149 litres of spirit and only 25 litres of Grande
149 "Chartreuse. The statement above referred to has "apparently been circulated with the object of con- "veying the impression that the Liquidator came in- "to possession of a large stock of genuine Char- "treuse, and that the stock so acquired is available "for the supply of the current demand. The sug- "gestion is, it will be seen, entirely devoid of founda- "tion. The 25 litres of Chartreuse were valued at "4 frs. per litre, and the spirit at 65 centimes per "litre; it obviously, therefore, was not Chartreuse, "and it will scarcely be less obvious that the two "dozens of genuine Chartreuse would not go far
150 "towards supplying the demand in France, to say "nothing of the rest of the world. We remain, "Dear Sir, Yours faithfully, H. Rivière & Co. 50 Mark Lane, London, E. C. 1st February, 1905." Do you know this letter?

A. I do.

XQ71. You are of the opinion that it is not necessary that you should read it?

A. I know it.

XQ72. Will you tell me why you did not answer this article?

A. Because I did not consider it necessary.

(The paper is signed by the witness and annexed to the Commission marked Exhibit 19.) 151

XQ73. In the tasting of Messrs. Spiers & Pond, of which we were speaking some little time ago, who were the persons who gave their opinion on the Liquidator's Chartreuse and that of the Union Agricola?

A. I believe the Directors of the firm of Messrs. Spiers & Pond, and Mr. Parker: possibly somebody else.

XQ74. On what date did the experiment take place from which it came out that the liqueur of the Liquidator was said to be better than that made at Tarragona? 152

A. I cannot give you the date.

XQ75. About?

A. I should not like to say; I do not remember.

XQ76. It is several months ago?

A. Yes, several months.

XQ77. Six months ago?

A. Quite, if not more. I cannot tell you more than I have told you.

XQ78. At what time did Messrs. Spiers & Pond give you the order after the experiment which we have spoken of? 153

A. I heard of the experiment about the time I told you; about five or six months ago. The Chairman then told me that as soon as his stock of old Chartreuse was nearly exhausted—they had a good stock of the old—he would give me an order, and I received the order a week or two ago, perhaps a fortnight ago.

XQ79. What are the large firms in London to which you supply the liqueur of the Liquidator?

A. Is it a question I am bound to answer? Am I bound to tell you who my customers are?

154 By Mr. Kelly: I object.

The Witness: I could give you many, but I do not see why I should disclose to you the secrets of my business.

XQ80. I will modify the sense of my question. What are the large firms in London; who are the largest retailers in London of wines, spirits and liqueurs?

A. There is more than one meaning to the word retailers; do you mean retailers to the consumers or retailers to the restaurants and wine merchants?

155 XQ81. Do you know the following firms: W. & A. Gilbey?

A. Yes.

XQ82. Army and Navy Stores?

A. Yes.

XQ83. Harrod's Stores?

A. Yes.

XQ84. Civil Service Supply Association?

A. Yes.

XQ85. Spiers & Pond?

A. Yes.

XQ86. Junior Army and Navy Stores?

156 A. Yes.

XQ87. Hatch, Mansfield & Co?

A. Yes.

XQ88. Are they large firms?

A. Yes, but there are many others of equal importance which you have not mentioned.

XQ89. Can you name them?

A. Yes. George Simon & Whelon, W. E. Edison & Co., W. H. Beauly, Trower & Sons, G. F. Grant & Co.; and I may say ourselves, Geo. Idle, Chapman & Co., as we are about the largest; S. Hanson & Sons, J. Lyons & Co. They are about the biggest.

XQ90. Are they more important than those which were mentioned before? 157

A. Yes, some are.

XQ91. Are you selling the the liqueur of the Liquidator to the houses which I have mentioned?

A. I refer you to my previous answer.

XQ92. You stated that the English public prefers the liqueur of the Liquidator?

By Mr. Kelly: I object, on the ground he never so stated.

By Mr. Bonnet: If I cannot also make a remark I had better go. I state that Mr. Legras is translating my question; I think that if you have an objection to make, it is— 158

By Mr. Kelly: It is just when you say that that I make my objection. You have not translated properly the words of the witness, and therefore I have the right to make my objection, and I make it.

XQ93. You have stated that the English public prefers the Liquidator's liqueur?

A. When?

XQ94. I repeat: You have said that the English public prefers the Liquidator's liqueur? 159

A. When?

XQ95. Or at least they attribute the same value to the Liquidator's liqueur as that manufactured at Tarragona?

A. When?

XQ96. How is it in the price lists and circulars of the firms which I have mentioned to you the liqueur of the Liquidator is not mentioned, whereas that of the "Pères Chartreux" appears?

By Mr. Kelly: I object as misstating the words of the witness.

160 XQ97. What have you to reply to my question?

A. To which part?

XQ98. Can you tell me why it is that in the price lists of the firms I have mentioned the liqueur of the Liquidator does not appear whereas the liqueur of the Carthusian Fathers appears?

A. I have no knowledge whether it appears or not.

XQ99. Do you know this price list?

Mr. Bonnet hands witness a price list.

By Mr. Kelly: I object to the production of this price list as not being identified and
161 as not being proper cross-examination.

XQ100. You told us in the course of the examination made by Mr. Kelly that the firm of Spiers & Pond, after experiments which had been made, had recognized the superiority of the Liquidator's liqueur; moreover, you have declared that the chairman of the firm of Messrs. Spiers & Pond had promised to give you an order when the stock of the old Chartreuse was exhausted. I am showing you the price list of Spiers & Pond, dated March, 1906, in which appears neither the old Chartreuse
162 nor that of the Liquidator, but in which appears the liqueur of the Carthusian monks. How can you explain that in this price list of Spiers & Pond mention is made of the liqueur of the Pères Chartreux, which, according to you, was found inferior to that of the Liquidator by Messrs Spiers & Pond, and that no mention is made of the old Chartreuse, when you stated that the chairman had declared they were waiting for the stock of the old Chartreuse to be exhausted to give you an order for that of the Liquidator?

By Mr. Kelly: I object on the ground that

the catalogue has not been identified, and that there is no evidence that this is the catalogue of the firm of Spiers & Pond. 168

By Mr. Bonnet: I will have it identified hereafter.

XQ101. I am now asking you what you have to answer to my question?

A. I merely say my former answer is perfectly true.

By Mr. Bonnet: Thank you.

Redirect-Interrogatories by Mr. E. Kelly, representing the defendants: 164

By Mr. Kelly:

RDQ1. You have been crossexamined upon the letter of Mr. Lecouturier of 20th September, 1904, in which I read the words: "It appears that the liqueur of the Chartreux can only actually be made at the Grande Chartreuse." Have you ever heard, prior to this litigation of any other allegation made regarding the liqueur than this? In other words, have you heard that Chartreuse could be manufactured anywhere else than at the Grande Chartreuse? 165

A. No, I have not.

RDQ2. Have you ever heard the legend as you call it, that the liqueur owes its perfume to the herbs gathered on the Grande Chartreuse disputed before this litigation?

A. Never.

RDQ3. Was this legend, or was not this legend universally admitted by the trade until this litigation?

A. Yes, to the best of my belief.

166 RDQ4. You have been asked on cross-examination whether you made the statements contained in your letter of August 14th, 1905, without any personal verification. What steps, if any, did you take in view of coming to a personal conclusion on the subject?

A. I must have written to France for the information.

RDQ5. Did you, or did you not, visit the distillery at Fourvoirie?

By Mr. Bonnet: I object to the question as leading.

167

A. I did.

RDQ6. What was the date of your visit to the Monastery?

A. I think October, 1904.

RDQ7. Did you on that occasion visit the distillery?

A. I did.

RDQ8. Did you on that occasion taste the liqueur?

A. I did.

RDQ9. Did you or did you not take information
168 regarding the whole question?

A. I did.

RDQ10. Some witnesses produced by the other side have testified that the Carthusian monks have a secret process, and that Chartreuse cannot be manufactured by any one not in possession of this secret process. Have you been able to come to any decision on the question whether any secret process exists?

By Mr. Bonnet: I object to the question, the witness not being an expert.

A. After tasting I am of the opinion that if such a secret exists the Liquidator is in possession of it. 169

RDQ11. Will you state just what took place with regard to the alleged Chaplin & Co. order?

A. For the moment I forget the name of the director who called. I believe he is the one who writes a monthly circular that they send to the trade. He asked me if I could give any private information that he could print in his circular regarding my appointment as agent for the Liquidator. In the course of the conversation we had I mentioned the fact that I was proceeding to the distillery. He offered me an order and I told him 170 that as far as I knew there was only a certain number of cases and that any one of my friends would be glad to take the whole parcel. He then told me: "Well, can you allot me fifty cases," and he sent in the order for fifty cases, but I made no promise.

RDQ12. Do you know the maiden name of the lady that Mr. Rivière married?

A. Yes.

RDQ13. What is it?

A. Gilbey.

RDQ14. Is she any relation to the firm of W. & A. Gilbey, referred to in the cross-examination?

A. She is the daughter of one of the members of the firm. 171

Recross-Interrogatories by Mr. J. Bonnet, representing the plaintiffs:

By Mr. Bonnet:

RXQ1. You have declared that in October, 1904, you visited the distillery at Fourvoirie?

A. Yes.

172 RXQ2. Are the agents authorized to pay such visits?

A. I do not know; I went there and I was admitted.

RXQ3. Have you seen the process of manufacturing in use?

A. There was work going on.

RXQ4. Were you present at the manipulation of the plants?

A. No.

RXQ5. Were you present at the making of the ingredients which were used for making definitely the liqueur?

173 A. No.

RXQ6. Did you know the old staff employed by the Carthusian Fathers?

A. I have only been there once.

RXQ7. Did not Messrs. Chaplin & Co. urge the delivery of the fifty cases of liqueur which they ordered from you?

A. No, and that proves that they never gave a firm order.

RXQ8. Who was it solicited the sale of the cases of Chartreuse? Was it you or Messrs. Chaplin & Co.?

174 A. I do not understand.

RXQ9. Was it you who offered to sell fifty cases to Messrs. Chaplin & Co., or was it Messrs. Chaplin & Co. who asked you to deliver to them fifty cases of the old Chartreuse?

A. It was Messrs. Chaplin & Co., for the very good reason that if I had given them fifty cases of the old Chartreuse they would have made a considerable profit; it would have been an act of friendship on my part towards their firm for giving them what other firms could not obtain.

W. H. GARRET.

Session of Friday, March 16th, 1906, at 2 p. m. 175

Present: Parties as before.

Examination of JEAN ELIE DELAIR.

JEAN ELIE DELAIR, of No. 15, Rue de la Tournelle, Paris, France, a restaurant keeper, aged sixty-three years, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

Direct-Interrogatories by Mr. E. Kelly, representing the defendant: 176

Q1. What is your name?

A. Delair, Jean Elie, called "Frederic."

Q2. What is your age?

A. Sixty-three years.

Q3. Where do you live?

A. No. 15, Rue de la Tournelle, "Tour d'Argent."

Q4. What is your profession?

A. Restaurant keeper.

Q5. What is the name of your restaurant?

A. Restaurant of the "Tour d'Argent" (Tower of Silver), founded in 1580.

177

Q6. What class of customers is yours?

A. My customers—they are foreigners, not many French— Then, my customers, it is America and England, in a word the whole world, even to Japanese, Siamese— From very far ambassadors come to my house to eat. My renowned dish is my duck.

Q7. Is the duck the only one of your creations?

A. Ah, no— I did not know, otherwise I would have brought—I have a hundred of them, 102, or 104 creations, and if you had them you would recognize them almost all as American names, for

178 each dish that I have invented I have given it the name of the person who asked me for it. Thus I have an American—my last creation, I call it B—it is a gentleman who is— I do not quite know if he is from San Francisco. My customers, I tell you, it is all the high society which comes to the house, princes as well as former kings have come—not many Frenchmen, but I have had the Duc d'Aumale, the Prince de Joinville, I have not all of them, you know—the Duke of Hamilton, who was not—but he was French all the same— When he came he told me that it was only at my place that one could eat well, but he rewarded me; at his
179 shooting he always sent me some grouse. It was my loss when he died. Among other things it was he who said to us: Frederic—because when he came with his friends, two of them would eat 200 frogs—the Duke of Hamilton, he said: "Look here, Frederic, they say in England that the French are eaters of frogs, but it is rather ourselves who eat them." It was true, he liked the frogs very much.

Q8. Do you know a liqueur which is called Chartreuse?

A. Oh, yes, that—I am old enough to know it.

Q9. Are you called upon sometimes to taste wines and liqueurs?

180 A. It is the first time— No, no.

Q10. To taste.

A. No, no, I never taste— I have never eaten my duck and never do I taste. I have never eaten my duck; the wines, I serve them good, I am sure that they are good, I have tasted Chartreuse, and I acknowledge that Chartreuse for me, as I say, is superior to the other.

Q11. Which?

A. I say, it is quite natural that the old must be better than the new, as the Carthusian Fathers could not take the soil with them, they have per-

haps been able to take the herbs to the Pyrenees, but they cannot take up the soil where the herbs of the Grande Chartreuse grow, which have a different perfume odor than down there; and one tastes, the new Chartreuse, which is superior to the liqueur of the Carthusian Fathers, because it least— I do not know, but I have tasted, I have smelt the two bottles, and that went up— I do not drink it, but when I smelt the bottle of the Carthusian Fathers, that made by hair stand on end— And then it is not the same bouquet. 181

Q12. To what is attributed the bouquet of Chartreuse?

A. —Ah, that—the bouquet of Chartreuse must be due—to the plants, the mixture of the plants, probably that is it, because, at least Chartreuse is made by the herbs, is it not?—the old is always at the same place, whereas in Spain they have not the same herbs, probably, and in addition to that they have not the soil that is necessary— A plant will grow well in one place, it will not grow well in another, it is the soil which is not suitable— they have not been able to carry it away, it must be said. 182

Cross-Interrogatories by Mr. J. Bonnet, representing the plaintiffs: 183

XQ1. Mr. Delair, if I have properly understood, you are not in the habit of drinking wines and spirits?

A. Never.

XQ2. It is simply—

A. I drink ordinary white wine, the most common that I have, and liqueurs, never.

XQ3. It is simply by the odor that you have established the differences?

A. I myself say: I never taste my dishes, which

184 I make, it is my smell, it is my nose that knows what is wanted in them. In recognizing Chartreuse I smell—and at the same time I have tasted it. As I tell you—I find that the old Chartreuse which is superior to that one, there is the same bouquet, there is not the same taste, and I tell you, on smelling the two bottles, the liqueur of the Carthusian Fathers got my head, it gave me a headache— Yes, the other, it is mild.

XQ4. Excuse me, sir, in your opinion, does the so-called liqueur of the Liquidator produce the same impression as the old liqueur of the convent?

A. There is much— At least, I still have the old,
185 you know, and the new. There are some who will not have it, the new, it is the old which they want.

XQ5. They do not want the liqueur of the Liquidator?

A. No, they do not want it— The Liquidator, it is Spain, is it not?— I do not know.

By Mr. Kelley (to the Stenographer): You have put that down?

XQ6. The liqueur which is made at the present time at the Grande Chartreuse, does it produce the
186 same impression on you as the old liqueur of the Carthusian Fathers?

A. The old Chartreuse of the Carthusian Fathers?

XQ7. Yes.

A. I have just told you that I like better the old Chartreuse, or the new, if you like, than that of the Carthusian Fathers, the liqueur— Is it that?

XQ8. No, that is not what I mean to say to you.

By Mr. Kelley (to the Stenographer): Will you read it over again.

By Mr. Bonnet: I am going to put my

question more precisely. You know, have you said, the liqueur which was formerly made at the Grande Chartreuse, which is called the old Chartreuse? 187

A. Yes.

XQ9. You have perhaps smelt, as you do not taste, the liqueur which is made at the present time at the Grande Chartreuse. Well, according to your idea, which is the better of these two liqueurs? Is it the old, or is it the liqueur which is made at the present time at the Grande Chartreuse?

A. I will say that I have tasted the new, that it is that which I affirm is good. The old, I have not tasted, I have some at my place, I bought it when it was said there would be no more Chartreuse; I paid very dear for it, but I have some real—not, at least, of the real, of the old and of the new. The new, I find excellent. 188

XQ10. And you have not tasted the old?

A. No, sir, I do not drink liqueurs.

JEAN ELIE DELAIR.

Session of Friday, March 16th, 1906, continued. 189

Examination MRS. CAROLINE GRENIER.

Caroline Grenier, of Saint Laurent du Pont, Department of the Isere, France, temporarily sojourning in Paris, France, agriculturist, aged forty-seven years, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

Direct-Interrogatories by Mr. Edmond Kelly, representing the defendants:

190 Q1. What is your name?

A. Mrs. Grenier.

Q2. Your Christian name?

A. Caroline.

Q3. What is your age?

A. Forty-seven years.

Q4. Where do you live?

A. At Saint Laurent du Pont.

Q5. What is your trade?

A. Cultivator.

Q6. Have you ever done anything else than cultivate land?

A. No, sir, never.

191 Q7. Have you ever or not—have you or not gathered plants at the Grande Chartreuse?

A. Gathered plants?

Q8. Gathered plants?

A. Yes, I gathered all the time, while we were there sometimes, when we were young, and could begin to go picking; we did nothing else; that was all the work we did do, when the plants were ripe.

Q9. Since your youth, you say?

By Mr. Bonnet: I object, the question is leading.

192 A. Yes.

Q10. On whose account did you pick the plants?

A. Always for the Carthusian Fathers.

Q11. What plants did you pick for the Carthusian Fathers?

A. We picked "venerelle" principally, that it's it. And the other plants, that was not found on the State domain. Principally, it is that.

Q12. What other plants did you pick on behalf of the Carthusians?

A. Well, there was "venerelle" as they call it, for the Carthusians. Other plants were also picked

that could be picked on those grounds, there even was— But "venerelle," it was picked on the State, because it is found on the mountains. 193

Q13. Did you pick no other plants than Vulnerary for the Grande Chartreuse?

A. Not on the mountains, sir. There was gathered hypericum, marjoram—also wild thymes, also maidenhair fern.

Q14. How did the Carthusian Fathers pay you?

A. They pay us by the kilogram; they pay us 16 sous a kilogram for the "venerelle."

Q15. And the hypericum?

A. The hypericum: it was, I think, four sous.

Q16. And the marjoram? 194

A. It was one sou; two sous the kilogram; that made one sou per pound. These were all the plants that they took green.

Q17. Do you know why they paid the vulnerary dearer than the others?

A. Because it was probably much more difficult to go and pick it. For the "venerelle," that is found on the rocks, in the mountains, it is much more toilsome. As for the other plants, they are found at home, on the ground, the—

Q18. Have you ever gathered vulnerary elsewhere than on the estate of the Grande Chartreuse?

A. I do not think so, sir; no, that I have gathered it elsewhere. 195

Q19. Have you ever heard that vulnerary could be gathered outside the estate of the Grande Chartreuse?

A. There might have been some also, but for we others, it was our country, to pick it there. But higher up there might have been some also. All the mountains were not gone over, there are too many of them.

Q20. Yourself, have you ever gathered it outside the estate of the Grande Chartreuse?

196 A. No, we have always gathered it—if you do not know the mountains—at the Alienward, in Erpison, at Montheur. These are the names where these plants are cultivated.

By Mr. Kelly: I am going to bring in Mr. Dondey to give us the spelling of these names.

(Mr. Kelly has Mr. Dondey brought in.)

By Mr. Bonnet: I would remark that Mr. Kelly has Mr. Dondey brought in at this time when he is going to hear him later as a witness, and asks him to rectify the names
197 of the regions of which the witness spoke.

By Mr. Kelly: I have not asked him to rectify the names, I have asked him to spell them for the stenographer. If Mr. Bonnet makes any objection to the names being spelt I will not call any more on Mr. Dondey.

By Mr. Bonnet: I have no difficulty in acknowledging that it is interesting for the names to be properly written, but it is not proper that if the witness has given one name, Mr. Dondey should furnish another under pretence of rectifying the spelling and
198 the pronunciation.

By Mr. Kelly: Then I will now ask the witness to repeat to us the names that she has already mentioned and I will ask the stenographer to take down these names as well as he is able.

Q21. Will you repeat the names of the places, Madam, where you have gathered vulnerary?

A. We have gathered it, sir, at the Alienard, in Erpison, at Montheur. That is where we have gathered this herb, this plant, the three principal

places. Now, if there in any higher up?— There 199
are mountains here to go over.

Q22. And where did you gather the hypericum?

A. Well, sir, it was gathered on the State— There was a good lot of it there, but still it was not the best. It was on the private land that it was gathered. There is only maiden-hair fern, sometimes a little of it was found on the mountains.

Q23. Did the Carthusian Fathers particularly want to get the vulnerary?

A. Oh, I think, sir, that they must have wanted it, as they took it sufficiently.

Cross-Interrogatories by Mr. J. Bonnet, represent- 200
ing the plaintiff:

XQ1. The factory which is at the present time situated at Fourvoire—

A. That which is there now?

XQ2. That which is there now, did they entrust you to gather plants?

A. No, sir. I do not know who picked them this year, but we did not attend to it.

XQ3. Do you know for what use were the plants which you formerly took to the Grande Chartreuse?

201

A. Ah, of course not, it is not known, those gentlemen did not say.

XQ4. Did the Carthusian Fathers watch you to know where you went to get the plants?

A. Oh, no, sir, because they knew very well they did not come from the grounds, that it was necessary to go in the mountains. They did not watch, they knew very well that these plants are only in the mountains.

XQ5. Are there not any other mountains in your region than those of the Grande Chartreuse?

A. Oh, sir, there may be others. I do not know

202 all the mountains myself, you understand. I know those which we have been over to pick the plants, but we do not know all the mountains.

XQ6. Did you go there, on this estate of which you spoke just now, because it was near your home?

A. It was nearer, yes, sir; it was not so far as to go farther. It may very well be that on the highest mountains there may still be some there, but at least one did not go there.

XQ7. You were not obliged to go to one place more than another?

A. Oh, no, sir, so long as one gave them the
203 plants, so long as one picked the plants they wanted, they troubled themselves very little about it.

Redirect-Interrogatories by Mr. Edmond Kelly, representing the defendant:

RDQ1. You have said that you gathered plants for the Carthusians since your childhood, have you not?

A. Yes, sir, my mother picked them before us.

RDQ2. Did your mother explain to you how to gather the plants?

204 A. Yes, she took us with her, she taught us to pick them.

RDQ3. It was from her then that you learned the plants to pick, how they were picked?

A. Yes, quite so.

RDQ4. Was it your mother who told you where to go to look for the plants?

A. Yes, it was she who took us with her.

RDQ5. Did your mother ever make you believe that vulnerary could be found elsewhere than on the estate of the Grande Chartreuse?

A. There is none, sir. It is as I tell you; if there is any on the highest mountains, it is that one has not been there, we others.

Recross-Interrogatories by Mr. J. Bonnet, representing the plaintiff: 205

RXQ1. Do you know the estate of the Grande Chartreuse?

A. Sir, it may well be that I do not know all. For I have not been all over the mountains, I only knew the Alienard, the Erpison, the Montheur; I have not been everywhere. In our region there is a lot of them, of the mountains, and if it were necessary to go over them all—

Re-redirect-Interrogatory by Mr. E. Kelly, representing the defendant: 206

RDQ1. But it was only at the places you have mentioned that you have gathered vulnerary?

A. I think, sir, that I am not mistaken; if that belongs to the State, it is there we took it.

Session of Friday, March 16th, 1906, continued:

Examination of MRS. MARIE MERLIN.

207

MARIE MERLIN, of the village of Bourdoux, near Saint Laurent du Pont, Department of the Isère, France, temporarily sojourning in Paris, France, agriculturist, aged fifty-nine years, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

Direct-Interrogatories by Mr. Edmond Kelly, representing the defendants:

Q1. What is your name?

A. Marie Merlin.

Q2. What is your age, Madam?

208 A. I am fifty-nine, sir.

Q3. Where do you live?

A. We live above Saint Laurent du Pont, in the hamlet of Bourdoux.

Q4. What is your profession?

A. Cultivator.

Q5. Have you or have you not ever picked plants for the Carthusian Fathers?

A. Sir, all the plants that we picked for the Carthusian Fathers were got in the fields, in the meadows, and the herbs that were picked, they were taken on the Administration. It is the greater part, this herb.

209

Mr. Kelly requests the stenographer to read the answer.

By the Commissioner: That is just what you said?

The Witness: Yes, sir.

Q6. Have you gathered those plants for the Carthusian Fathers? Have you gathered them for the Carthusian Fathers?

A. Yes, sir, for the Carthusian Fathers.

Q7. What plants, what are the names of the plants that you have gathered for the Carthusian Fathers?

210

A. Well, sir, marjoram, hypericum and centaury were gathered on private estates, that is all. But the greatest part, it is the herb which we have picked in the Administration property.

Q8. What is the name of the herb you have gathered on the Administration?

A. Well, sir, it is "vénérelle."

By Mr. Bonnet: I ask that the pronunciation be retained.

Br. Mr. Kelly: Yes.

Q9. How much did the Carthusian Fathers pay you for the "vénérelle"? 211

A. Well, they paid us 16 sous the kilogram, green.

Q10. How much did they pay you for the hypericum?

A. They paid two sous for it.

Q11. And the marjoram?

A. The marjoram? One sou and a half.

Q12. The kilogram or per pound?

A. Per pound, sir. That makes two sous per kilogram.

Q11. Two sous per kilogram, the marjoram?

A. Yes, sir. There was not much of it picked. 212
We others, it is not our line.

Q14. And the hypericum? Two sous per pound or per kilogram?

A. Two sous per pound.

Q15. Four sous per kilogram?

A. Yes, sir.

Q16. Where did you go to pick the "vénérelle"?

A. The "vénérelle," sir, one went to pick it above the— in Pertui, in Erpison, at the Alienard, at Montheur.

Q17. Have you ever found "vénérelle" elsewhere than at these places?

213

A. Oh, no, sir.

Q18. Never?

A. No, sir, lower there is none.

Q19. Have you ever heard that "vénérelle" could be found elsewhere than at the places which you have named?

A. No, sir. A little higher, there is still some, at Collet, there is some, we have been there; it is on the Administration.

214 Cross-Interrogatories by Mr. J. Bonnet, representing the plaintiffs:

XQ1. Have you been to look for the plants, of which you have just spoken, elsewhere than at the places that you have just told us of?

A. Oh, no, elsewhere there are none; there is some only on these mountains.

XQ2. Have you been to look for any elsewhere?

A. No, sir, elsewhere we have not been, because it is only on the mountains that there is some, on the Administration. We have been—beyond Ruchelle, above.

215 XQ3. Did you go to private people?

A. No, sir, there is none on the property of private people, it is only on the Administration.

XQ4. Have you been to look for any on other mountains besides those of the Grande Chartreuse?

A. Yes, we have been, but it was far.

XQ5. It was far?

A. Oh, yes, we have been to Bovinette, which is called the Eparres, at the Echaud, at the Collet.

XQ6. Were you asked the place where you went to gather the plants?

A. Oh, the Carthusians had no need to ask, for
216 they knew. Before we others went there the servants who were up there, who did the distilling, went there.

XQ7. Do you gather plants at the present time for the Liquidator?

A. No, sir, we have not picked this year—the past year for the Liquidator, for the plants which we had picked were offered by a woman to the Liquidator, who refused them.

Session of Friday, March 16th, 1906, continued. 217

Examination of ANTOINE DONDEY.

ANTOINE DONDEY, of Saint Laurent du Pont, Department of the Isère, France, temporarily sojourning in Paris, France, an expert geometrician, aged fifty-one years, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-Interrogatories by Mr. E. Kelly, representing the defendant:

218

Q1. What is your name?

A. Dondey, Antoine.

Q2. What is your age?

A. Fifty-one years.

Q3. Where do you live?

A. At Saint Laurent du Pont.

Q4. What is your profession?

A. Expert geometrician.

Q5. Do you know the "massif" (group) of the Grande Chartreuse?

A. Yes, perfectly.

Q6. What do you understand by the "massif" of the Grande Chartreuse? 219

A. By? Do you say "domain" or "massif"?

Q7. I say "massif."

A. For my part, I distinguish by "massif" the nearest region, the most restricted, the most limited by the streams.

Q8. What streams?

A. Well, we have on one side the plain which is watered by the canal of Lérètang, which flows into the stagnant Guiers, afterwards into the flowing Guiers, and then it limits the flowing Guiers up to its source. That is what I mean by "massif." On

220 the other hand from the source of the flowing Guiers it returns by Saint Pierre d'Entrement and Saint Pierre de Chartreuse.

Q9. Do you know how many hectares that comprises?

A. Hectares?

Q10. Yes.

A. Upon my word, sir, I did know, I have known, but—it has slipped my mind.

Q11. You heard the evidence of Madame Grenier and Madame Merlin?

A. Yes.

Q12. Did you note the places where they said
221 they gathered the "vénérelle"?

A. Yes.

Q13. Where are those places?

A. Those places are well known. In any case the word "vénérelle" is spoken by everybody as the language of the district, the idiom of the district, as we say "mille pertuis" (St. John's wort). "Mille Pertuis" always means the same thing, but what is called "vénérelle" is what is sometimes called vulnerary; it is the same plant, it absolutely the same.

Q14. And the places where these witnesses declared they had picked vulnerary, where are they?

A. These places are in the domain itself of the
222 Grande Chartreuse, National domain, and in which are enclosed five parcels of land of the liquidation of the Carthusians. I should like you to verify my words by official proofs, by a State map, which is in my hands, where the names are written. I did not make it, it was made before me. Here it is.

(The witness produces a map.)

By Mr. Bonnet: That map should be annexed.

The Witness: It does not belong to me, it is confided to me by a public department. 223

By Mr. Bonnet: I object—

The Witness: You may object but I cannot leave it.

By Mr. Bonnet: I make an objection to the discussion being held about a document which cannot be annexed.

By. Mr. Kelly: If Mr. Bonnet is opposed to the production of this map, it will be necessary for us to settle the matter with another map.

By Mr. Bonnet: I am not opposed to the production; on the contrary, I ask that it be produced. 224

The Witness: I should like to leave it, but it does not belong to me. It is necessary that I return this document, it is in an inventory.

Q15. As you cannot leave the map, and as Mr. Bonnet is opposed to its being produced unless it is annexed, I will ask you to refer to another map which we can annex to the Commission.

A. Place it in juxtaposition, if you wish.

Q16. Will you indicate on this map—which I produce and which I ask to be marked Exhibit No. 1—indicate on this map the estate of the Grande Chartreuse? 225

A. The estate of the Grande Chartreuse, the national domain, gentlemen, is all that which is tinted green. Here it is— And in this green tint there are enclosed five mountains which belong to the Liquidation of the Carthusians, indicated by a difference in the tint.

Q17. Will you name the mountains?

A. Well, you have the Essart du Rocher, the Alienard, Erpison, Cordes and the Charmille. Now,

226 I add to the number of these mountains another one about which the question is not yet settled, is being discussed between the Carthusians and Mr. Lecouturier, which is called Pré Gervais. The question is not settled, I think not, sir.

Q18. It is the small part marked in yellow?

A. Yes, yellow.

Q19. Can you indicate on this map all the places named by the witnesses, of which you have just spoken?

A. Repeat the places, because I have not the names.

227 (The stenographer repeats the names: Alienard, Erpison, Montheur.)

Q20. Will you indicate on the map—

A. The Alienard is here.

Q21. How do you write "L'Aliénard"?

A. L' A-l-i-é-n-a-r-d.

Q22. How do you write "Erpison"?

A. E-r-p-i-s-o-n.

Q23. How do you write "Montheur"?

A. M-o-n-t-h-e-u-r.

228 By Mr. Kelly: I will ask the stenographer to go back to the other places named by the last witness.

(The stenographer reads the answer to interrogatory No. 16, in the examination on Madame Merlin:

"Q16. Where did you go to pick the "venerelle?"

A. Sir, the venerelle—one went to pick it above the—in Pertui, in Erpison, at the Alièmard, at Montheur."

Q24. What is the first? To what four places do you understand the witness meant to refer to?

(To the Stenographer: Will you repeat the whole question so that the witness may reply.) 229

(Stenographer reads over the question.)

A. Erpison, Pertui, the Alienard and Montheur, they are still in the domain.

Q25. How do you write Pertui?

A. P-e-r-t-u-i.

Q26. Where is it indicated on your map?

A. Pertui, I do not quite know, you know. It is woody—because there has only been written on the map that which is fields, all that which is covered with wood is not indicated. Pertui is there—it was formerly a meadow which was distinct, but it is woody now, consequently, it is not marked—And the other parts indicated by this woman belong to the State, to the Liquidation, that covers all, one is mixed up with the other. 230

By Mr. Kelly (to the Stenographer): In reply to the cross-examination the witness mentioned some places?

(The Stenographer reads back and finds the end of answer to cross-interrogatory No. 2, of Madame Merlin: 231

"We have been—above Ruchelle—"

The Witness: One might have said there "La Ruchelle," it is geographical, that?

Q27. Where is La Ruchelle?

A. Ruchelle?—on this map?— I do not see it there. It is the forest of Ruchelle, but the village is not on it— It is over there.

By Mr. Kelly (to the Stenographer): And after that?

232 The stenographer finds and reads a part of the answer to interrogatory No. 5 of the cross-examination of Madame Merlin—"We have been to Pominette—' '

Q28. Do you know where is Pominette?

A. No, it is not put down—that is not what she said.

Q29. What did she say?

A. She said "Bovinette." Well, sir, Bovinette, that is Bovinon.

Q30. Where is Bovinon?

233 A. That is also in the domain of the State or in the hospitals of Grenoble. Here is Bovinon. And she said—the stenographer understood "Pominette" I heard Bovinette.

The stenographer continues to read the answer to cross-interrogatory No. 5 of Madame Merlin: "We have been to Bovinette, which is called the Eparres, to the Echaud, to the Collet."

Q31. Where is the Echaud?

A. It is next to Bovinon, it is the same forest.

234 Q32. Will you spell "Echaud?"

A. Upon my word! Echaud, it is not a parish—it is written—I write it with a D at the end.

Q33. Will you please spell "L'Echaud?"

A. L'-E-c-h-a-u-d.

Q34. At the Collet?

A. Ah, the Collet, there must be no confusion, it is necessary to make a distinction between Col and Collet. It is necessary to make a distinction between Col and Collet, there are two places; there is a col and a collet.

Q35. Where is the Collet?

A. They are quite opposite one to the other, 235
quite opposite. What is called the Col—the Col, then, I am going to explain; it is the low point of the mountain, where one crosses the Grande Chartreuse to come into the region, one passes by the Col, the Col of the Ruchelle, and it is well known, that is the name on maps it is not called in any other way.

Q36. And the Collet?

A. The Collet is quite in an opposite direction, and far from there. I am going to tell you: The Collet is a part of the Domain of the Grande Chartreuse, which joins the Hospitals of Grenoble at the summit of the meadows of Valombrè and 236
Malamile. Now, that will satisfy you, I think, for the definition of the word "Collet."

Q37. Did the witness pronounce the names in question properly?

A. They are the names of the place, the names in the dialect of the country, which have the consonancy of the geographical words, but it is not absolutely the pronunciation. It is the consonancy, but it is not the pronunciation.

Q38. Are the witnesses educated people?

A. Upon my word, they are people, I think, who do not even know how to write their name—I 237
think so, I do not affirm it, however. They are people properly brought up, if you like, honest, but as to the question of education and learning, I think they have none.

Q39. Have you tried to have other witnesses to testify on the question of the gathering of the plants?

A. Upon my word, no, that is a task which I do not wish to undertake. No, in the first place it would be very hard.

Q40. Have you with you the data which will

238 permit you to state just how many hectares there are in the group of the Grande Chartreuse and how many hectares there are in the Estate of the Grande Chartreuse?

A. Upon my word, I must tell you one thing—to remember my memory. I cannot remember. I think it is about 45,000 what I consider as the group, but as a domain, it is much less, I have that at home.

Q41. And you will bring them for the next hearing?— I ask you if you will bring them for the next hearing?

239 A. If it is desired I will bring them. If I am asked I will get them together; if I am asked I will do this work.

Cross-interrogatories by Mr. J. Bonnet, representing the Plaintiffs:

XQ1. The map which you have handed to the Commissioner, to be annexed as No. 1—

A. Yes, that it is I—

XQ2. Does it comprise the whole group of the Grande Chartreuse?

240 A. It comprises all the group of the Grande Chartreuse, but I have only tinted as part of the domain that which is the property of the Domain. For besides you have private properties, woods, meadows, cultivated ground— All that, I said— I did not see that it was necessary to distinguish the cultivated fields or the meadows or anything else— All that, I did not see that it was of such importance, I am asked for more work, I give more work—and again the demesnial parts independent of the Colf of the Ruchelle— That is what I meant to put.

XQ3. Does this map represent all the group of the Grande Chartreuse?

A. Yes, What I consider as the group— If one wishes to take as far as Chambèry, as certain do, as the railway timetable states— If one takes a a part of Savioe— I only take the environs of the Convent of the Grande Chartreuse, which is detached by dales. 241

XQ4. Approximately what does the group of the Grande Chartreuse represent? You fixed a figure just now?

A. I fixed a figure by considering the zone which I understand, which I consider as the Group of the Grande Chartreuse. I said about 45,000 or 46,000 hectares as group of the Grande Chartreuse.

XQ5. On what scale is your map? 242

A. At 25,000.

XQ6. Therefore, on the scale of 25,000th to 1 (1/25,000) you have 45,000 hectares represented there.

A. Upon my word, I think so, something near it, there is not much difference. But I say 45,000 hectares without being very precise.

XQ7. You are a geometrician—we will come back to that—you ought to know what is a scale and a surface, I take the map which is here before us and which is going to be annexed, I take into account the declaration which you made just now to the effect that the Group has about—I leave you a wide margin—45,000 hectares. I note moreover, that you declare that this map is at 1/25,000. I am going to address myself specially to the geometrician and ask him if he thinks that a map of this size can represent on this scale 45,000 hectares. 243

A. No, sir. I would point out to you that you put the question to me—I say to you: My map does not comprise all the group, it comprises the domain and the environs but not all the group. Understand my meaning well, do not be confused,

244 I do not think there would be any interest in drawing all the group on that.

XQ8. The part which you have drawn in green, which you have tinted green in this map, represents the domain of the State?

A. The domain of the State, sir, yes.

XQ9. Is this domain of the State conceded to the Liquidator?

A. Upon my word, sir, I do not know the conditions of the contract which exists between the Liquidator and the State, I was not there.

XQ10. About what surface does the part tinted green on your map represent? Not that the cal-
245 culation is easily made, as you have furnished the scale.

A. That depends if you want all that is tinted green or the principal part.

XQ11. The part tinted green, the domain of the State?

A. I am not able to state exactly, but I believe that the State is proprietor there of 6,000 hectares in the group—I believe without being very precise that it cannot be far from it.

XQ12. In this domain of the State, you have said the former property of the Carthusian Fathers is
246 enclosed.

A. Yes, sir.

XQ13. Which belongs to the Liquidator to-day?

A. Yes, sir.

XQ14. What is the surface of the property? Always according to the scale which you have indicated to me?

A. Upon my word, the surface of each private enclosure I cannot indicate.

XQ15. Give me a total figure?

A. Between sixty and seventy hectares, something like that, I cannot say exactly— You do business, you know, and you go from one thing to another—

XQ16. The places where the two preceding witnesses, Madame Merlin and Madame Grenier, said were those where they went to look for hypericum, are they in the domain of the Liquidation or in the domain of the State? 247

A. Sir, I have not heard what Madame Grenier said.

XQ17. Where is the Ruchelle? Is it in the domain of the Liquidator, is it in the domain of the State?

A. Sir, the Ruchelle does not form a part of any domain, the Ruchelle is a point of the parish of Saint Christophe entre deux Guiers which borders on the domain of the State which is limited by crests, by the summits of mountains. 248

XQ18. To whom does this domain belong?

A. La Ruchelle? I do not know if they are a hundred or two hundred owners. It is a communal section, it is a part of the parish, it is a village which has its Municipal Council and its deputy, there are 80 electors.

XQ19. Where is Bovilon or Bovinette?

A. Bovinette? I have just pointed out to you that one should say Bovinon, that that name does not exist.

XQ20. Where is Bovinon? Is it in the domain of the State or in the domain of the Liquidator? 249

A. Bovinon comprises the domain of the State and also a part of the hospitals; both are owners in the same; the hospital of Grenoble which holds also—it is there— The State has also a part in it.

XQ21. Does even a part of Bovinon belong to the Liquidator?

A. Oh, no, not now.

XQ22. And the Collet, to whom does that belong? Is it to State or to the Liquidator?

250 A. The Collet, it is a gorge mountain where there is a passage to cross from one dale to another. It is there that the hospitals of Grenoble and the State border, it is a gorge mountain. It is there that the Hospitals and the State border.

XQ23. Does that belong to the Liquidator?

A. Neither does that; it belongs to the State and to the hospitals.

XQ24. Does the Echaud belong to the Liquidator?

A. The Echaud neither, sir, it belongs to the State.

XQ25. The Eparres?

251 A. Neither that; that goes with the Echaud, it belongs to the State.

XQ26. The Alienard?

A. In the Alienard there is the State and the Liquidation.

XQ27. Erpison?

A. It is the same thing.

XQ28. To whom does Montheur belong?

A. Montheur? Montheur belongs to the State and that includes, I think, Cordes.

XQ29. You have told me that you were an expert geometrician?

252 A. And I maintain it.

XQ30. Expert geometrician attached to what Tribunal?

A. Attached to those who wish to intrust anything to me.

XQ31. You are not then inscribed by any Tribunal whatever?

A. I think there is nobody inscribed, I do not think that that exists.

XQ32. What special studies have you made?

A. I have studied the profession of expert geometrician; then I was employed at the Department

of Public Roads and Bridges for 15 years, then I left this Administration and since then I have made surveys, and I have done so for Tribunals which have entrusted work to me; but I believe there is no one specially inscribed at the Tribunals for geometry—I cannot give you the thing, I have not before me what is necessary, but I am sworn as expert, only I have not my commission with me. 253

XQ33. What did you do at the Department of Public Roads and Bridges?

A. I think that we attended to the roads, as in the Department of Public Roads and Bridges.

XQ34. What duties did you fulfil?

A. I did a little of all the services, the drawing up of projects, surveying of land, anything that came up. What I did during 15 years is difficult to say. 254

XQ35. Are you capable of drawing up a geometrical plan of some little importance?

A. If you have one to entrust me with, entrust it to me, if you are not pleased it will cost you nothing.

XQ36. Answer me seriously?

A. It is not for me to answer that question.

By Mr. Bonnet: I beg the Commissioner to remind the witness that I have the right to question him in this way which I think is courteous; I have the right for the Court of the United States to bring out the capacity of the witness, on which I do not put a doubt. I simply ask him to give me some elements for estimation; I therefore beg that you will reply to the questions without putting any to me. 255

XQ37. Are you capable of drawing up a geometrical plan of some little importance?

256 A. I will even draw up Paris if you like; I think that has its importance.

XQ38. Have you made any important surveying operations including the drawing up of plans.

A. Yes, numerous.

XQ39. Can you mention a few to me?

A. They will be perhaps numerous to enumerate.

XQ40. Will you please simply mention two or three important ones.

A. I am able to mention more.

XQ41. I only ask you two or three.

A. I will point out to you, sir, that if among our works there are some which are verified by judg-
257 ments, many others are the object of a contract, by mutual agreement, for the role of an expert is to conciliate the parties, when that can be done, there is no report to be laid before the Tribunal, a report is made which is accepted by the parties, which is registered just the same. I can mention several of them to you.

XQ42. You do not reply to my question. I do not ask if you have been called upon to conciliate parties, I ask you to let me know of two or three important services in which you have had to draw up geometrical plans of importance. Will you let
258 me know about these matters?

A. I am going to give you two of them at once, until I find others, because I have not got that in my mind—I have an affair Billon, of Saint Laurent du Pont, and Chabert, of Voiron, which was the object of a survey following a judgment from Grenoble.

XQ43. Of what did this operation consist?

A. Of a survey which, for the needs of the reading of the report, comprised a drawing up of plans.

XQ44. Did you draw up a plan on the spot?

A. Yes, sir.

XQ45. Or make a survey from the "Cadastre?"

A. No, on the spot. I have made not a few from the Cadastre and not a few on the spot. 259

XQ46. Can you indicate to me an affair in which you have had to survey land for instance for "cheminement?"

A. Yes, sir.

XQ47. Will you mention one?

A. At once sir—there was, in a litigation between the parish of Sarcenat and the Hospitals of Grenoble about the property of Porte, there is at the Hospitals of Grenoble a plan "par cheminement" (showing roads), drawn up by me.

XQ48. Was this plan drawn up by you all alone?

A. No, necessarily, I had assistants. 260

XQ49. When I say: "Have you drawn it up all alone," I ask you if you had not another geometrician?

A. No, I had assistants, I had no master, I was the master, I had two assistants.

XQ50. Do you know Thomas Simpson's method of land surveying?

A. I know the French method, the method of land surveying by triangulation, by the use of the stadia; but the one you mention is new to me, new or old, I don't know— In any case I know the method of land surveying without chains, in our mountains one cannot do otherwise. 261

XQ51. Have you employed the Thomas Simpson method in your operations?

A. I do not know that word; I tell you that I know very precise methods—

By Mr. Kelly: I propose that we adjourn to the next session the continuation of the examination.

(Adjourned.)

(The Commission rose at 3.30.)

262 Session of Wednesday, April 25th, 1906, at 2 P. M.

Examination of Antoine Dondey, continued.
Redirect interrogatories by Mr. E. Kelly, representing the Defendant:

RDQ1. Have you to-day brought the figures giving the number of hectares in the Group of the Grande Chartreuse?

A. Yes, sir, I have them; I will get out my little parcel to find them.

You will allow me, to undo my little parcel, there is no opposition?

263

By Mr. Kelly: Yes.

The Witness: For you know I have not got that in my head— You asked me about the group or the domain.

RDQ2. The number of hectares in the Group of the Grande Chartreuse?

A. In the group?

RDQ3. Yes.

A. In the Group of the Grande Chartreuse, I reckon in the largest sense of the word group, 264 40,000 hectares—the largest side, as much as as can be taken in.

RDQ4. Will you point out on the map produced by the plaintiff and marked Exhibit Q what you include in the group of the Grande Chartreuse?

A. Grenoble—I understand—yes, about this.

RDQ5. Specify, name the rivers.

A. Yes, but that extends more or less here to the foot of the forest, because it is not stopped short.

RDQ6. One moment, simply indicate the names of the rivers, the water courses which shut in the group?

A. Which shut in the group? We have on one side the flowing Guiers it is there—here—Saint Pierre d'Entremont—yes, it is there. That stream— 265

RDQ7. The flowing Guiers?

A. Yes, which separates Savoie and Isère. It was formerly the Franco-Italian frontier, up to 1859 it was the Franco-Italian Frontier, and from that rigde there, following a little—there up to there— there, the frontier or the limit between these Departments follows this ridge up to a little brook that I am going to find. It is over there—over here— It is there. Up to that little brook is the limit to the two Departments. 266

RDQ8. You follow the limit of the two Departments?

A. Yes, I understand as group of the Grande Chartreuse, from the limit of the two Departments formerly of the two States, all that—

RDQ9. Show the water courses, the rivers?

A. Because note well that the flowing Guiers does not come as far as there, to that ridge of mountains, you see it come, it flows like this, and then—

RDQ10. Name the places please, so that the stenographer can take down your reply. 267

A. Let us say that this starts from Saint Geny d'Ost, where it joins the Rhone, it flows into the Rhone at Saint Geny d'Ost.

RDQ11. Where is that?

A. That is further off, we must find the Rhone, you will not have it in the map, you have not got it; that will not be there. From Saint Geny d'Ost it comes to the bridge of Beauvoisin to—to the Echelles—that again separates the—

RDQ12. One minute, will you name the river Isère and begin by the river Isère. Is this river

268 one of the rivers which bound the Group of the Grande Chartreuse?

A. The river Isère is a river which crosses the middle of the valley which separates the Group of the Grande Chartreuse from the Dauphinoise Alps; there is a valley there, the valley of Crèsivaudan, it separates the Group of the Grande Chartreuse from the Dauphinoise Alps.

RDQ13. And it is the valley of the Isère—

A. Or of Crèsivaudan.

RDQ14. — which marks the boundary of the Group of the Grande Chartreuse to the East?

A. Yes, to the East, certainly.

269

RDQ15. And to the South?

A. East—West—to the South you have the meeting of the two valleys, the valley of the Isère as far as Voreppe and the valley of the still Guiers which comes to Saint Laurent du Pont and between two Guiers where it joins the flowing Guiers.

RDQ16. The flowing Guiers takes its rise near Saint Pierre d'Entremont?

A. At Saint Pierre d'Entremont itself, on the borders of Saint Pierre d'Entrmont and—for it is the ridge of mountains where the two parishes divide. You have Chapareillan, Barraux, St. Pierre

270 d'Entremont, Quartre Rivières, I can tell you that. There are four parishes there, I can tell you that.

RDQ17. From the point of Saint Pierre d'Entremont where—

A. Where the Guiers takes its rise you mean?—

RDQ18. How do you join Saint Pierre d'Entremont with the valley of the Isère.

A. Saint Pierre d'Entremont does not join with the valley of the Isère, it is separated by a declivity of the mountain which has a continuous ridge.

RDQ19. And all these ridges are part of the group?

A. I include them in the group up to the valley of Cresivaudan. 271

RDQ20. Does that include Mount Grenier?

A. No, because the interdepartmental limit is a little brook called the brook of Saint Andrè, which takes—

RDQ21. Then you accept as boundary to the North the boundary to the North between the two Departments?

A. That is what I consider it.

RDQ22. That is what you consider it?

A. Yes.

RDQ23. Is the boundary between the two Departments the same as that which divided France from Savoy? 272

A. The same, exactly the same, exactly the same.

RDQ24. And you say that in this group there are how many hectares?

A. 40,000. Here are my figures. I might have said "about" at one time, for it has not been searched out—

By Mr. Kelly: I beg the witness to remember that every word which he uses must be taken down, and to reply in the briefest manner possible. 273

By Mr. Dondey: Necessarily— I do not want what I say to be concealed.

RDQ25. How many hectares are there in the domain of the Carthusians such as it was before the departure of the Carthusians?

A. Before the departure of the Carthusians, the Carthusians were grantees, in the domain of the State, conceded by the State in 1816, by a Decree of the Government of that time, of 13 fields, making a total of 203 hectares, and the centiares, if you like—

274 RDQ26, Was the domain of the Carthusians of which you speak a part of the property of the State?

A. That belongs to the State, it is the State which conceded it.

RDQ27. And outside of the Domain of the Chartreuse how many hectares, are there in the property of the State?

A. Outside the domain?

RDQ28. The Domain of the Carthusians?

A. Outside the Domain of the Carthusians; well there are the Domain of the Carthusians, the principal Domain which includes the 233 hectares of
275 Demesnial fields conceded to the Carthusians there belongs to the State in forests and rocks 3,696 hectares, which are forests and rocks the property of the State.

RDQ29. And in fields?

A. In fields there must be added 203 hectares, fields of the State conceded to the Carthusians.

RDQ30. Do these two figures represent all the property of the State conceded to the Carthusians?

A. No, not yet— Now, as principal domain there are enclosed five mountains of the Liquidation which belongs to the Carthusians, they having
276 acquired them from the Hospitals of Grenoble to whom they were granted by the State, for this was the only domain of the State formerly, in 1810, up to, I think, 1815, the State was proprietor of all; it kept the forests, it conceded certain fields to the Carthusians and it gave to the Hospitals of Grenoble other fields and the Hospitals of Grenoble sold them to the Carthusians and the Liquidation afterwards took them—

RDQ31. What are the properties sold by the Hospitals of Grenoble to the Carthusians?

A. They are the five mountains which we have

always designated as properties of the Liquidation; the Essart des Rochers, Cordes, Arpison, the Alienard, Charmine, which make 86 hectares. 277

RDQ32. How do you write the word Arpison.

A. A-r-p-i-s-o-n.

RDQ33. Will you show me now on the map Exhibit Q where is Pertui?

A. I must look for it in an Ordnance map, I must look into it. It is a little larger, in that it cannot show well. Let us look a bit. I am going to look for St. Laurant du Pont.

RDQ34. If it would facilitate matters—if it is marked in this? 278

(Mr. Kelly hands the witness another map).

A. Wait, I am going to find it quicker— The name is written, but the field is not there. There it is—it is there, the other side of the brook, between these two brooks.

RDQ35. I will beg you now to find that in the map marked Exhibit Q.

A. Domain—it is confusion itself, now, here—wait a bit. It is there, in there, do you see? It is down there, that is where it is— 279

RDQ36. You have marked with a pencil above the two letters St. which are part of the wood of Saint André?

A. Certainly, it is in the domain of the wood of St. André.

RDQ37. Does that belong to the State?

A. Yes, if you wish me to explain how that belongs to the State—

By Mr. Kelly: That is not necessary.

The Witness: Good, I know the history of my district.

280 RDQ38. Will you now show me Montheur on the map Q?

A. It is not a field, they are demesnial woods.

RDQ39. I have not asked you for the field of Montheur, but Montheur?

A. Montheur lies between Arpison and the Cinq Rochers. There, in there, it is difficult—it is very small, that. Let us look in there. There is Saint André, it is in this same line as those rocks there—it is in those rocks there, Montheur lies in there—here is a ridge of rocks another and again another.

RDQ40. It is between the rocks, between the
281 ridge indicated in the map Bois de St. André?

A. Between the two ridges there about, the lowest, the least elevated.

RDQ41. To the East? To the West of the words "Bois de St. André?"

A. Yes, it is there.

RDQ42. Does that belong to the State?

A. Montheur belongs entirely to the State, they are woods.

RDQ43. Will you now show me Ruchere on the map Q?

A. The Ruchere? Yes, I am going to look it out
282 for you, your Ruchere, you will see. Let us see! Where are the woods of St. André which I have just seen? Here is the hamlet of the Ruchere, the Jolies; Ruchere, the Revredis, and there is a village there that is called Grand Village, and another that is called Village Chartreux. It is the highest village of the section of La Ruchère; it was a vast domain formerly, divided in various lots, to-day—

RDQ44. Will you tell me if vulnerary grows, to your knowledge in the village of La Ruchère?

A. No.

RDQ45. Do you know if it grows in the environs of the Ruchère?

A. Neither, neither, it does not grow there. 283

RDQ46. What is the place nearest La Ruchère where it grows?

A. The place nearest to the Ruchère where Vulnerary grows in the Canton of the Alienard which ends the fields of Alienard and woods of the State bearing the same name and which over-look the Ruchère.

RDQ47. You say that these hills over-look La Ruchère?

A. Yes, I affirm it. It is a ridge of mountains which ends in a little plateau; it is not altogther a ridge, it is a plateau.

RDQ48. Will you show me on the map Alienard, 284 on map marked Q?

A. Alienard—I am at La Ruchelle—here, Alienard is found here, it is there. Saint André comes out below and there is Alienard there.

RDQ49. Alienard is a little to the South?

A. To the East of the ridge of Saint André—Yes, here is the North, at the top, the South at the bottom.

RDQ50. To the South?

A. Yes, a little to the South of La Ruchère.

RDQ51. What is the Alienard?

A. They are vast forests of which the summit 285 terminates by rocks, almost un-wooded.

RDQ52. In what part of the Alienard does Vulnerary grow?

A. Vulnerary, there as elsewhere, only grows in the rocks of the stones, in stony places; it does not grow in the woods, you will not find it, or a solitary plant.

RDQ53. Is it above or below the wood?

A. Above, or in the low parts where there are no woods, stones, pebbles, rabbit burrows, it grows in that, in the rocks, in the fissures, or in the stony places.

286 RDQ54. To whom belongs the part of the region named Alienard, where vulnerary grows?

A. In the part of the Alienard where vulnerary grows, the principal part is the domain, it is the State, the rocks at the summit of the woods; it is there that is found the most, but it is found in the meadow of Alienard also, for it includes rabbit burrows, rocks, it is found a little there also.

RDQ55. To whom does the meadow of the Alienard belong?

A. Alienard? To the Carthusians, now in liquidation. That also comes from the Hospital, one side comes from the Hospital.

287 RDQ56. Does that belong now to the Hospitals?

A. Ah, no, no, it has been sold, the Hospitals sold that perhaps forty years ago to the Carthusians.

RDQ57. Where is Arpison?

A. Arpison, it is lower down, it is quite near; it is a great extent, a quantity, a string of fields.

RDQ58. To whom does Arpison belong?

A. The meadow of Arpison belongs to the Carthusians, in liquidation, and the woods which surround it to the State which bear the same name.

RDQ59. Are the conditions, so far as the vul-
288 nerary is concerned, the same in the Arpison as in the Alienard?

A. The vulnerary is the same everywhere in the domain. However another is found which is not picked taken, which has much resemblance, almost similar.

RDQ60. To what?

A. Which is almost similar as to the leaf, as to the flower.

RDQ61. I am not speaking of that now, we will go back to the vulnerary later. Where is Bovinon?

A. Above the Convent of the Grande Chartreuse.

It belongs to the Hospitals of Grenoble and to the State; it is bounded by the State and the Hospitals on the South side. I am very precise— Yes, that is it, over there. 289

RDQ62. You say that there is a side which belongs to the Hospital of Grenoble; can you indicate to me which is the part that belongs to the Hospital of Grenoble?

A. Yes, here it is—

RDQ63. Is it meadows or forest, or—

A. The Hospital of Grenoble; they are meadows with a little edge of woods; meadows, sheep pastures, with a slight bordering of woods. 290

RDQ64. Does vulnerary grow in the meadows.

A. In the meadows? There might sometimes grow some in the rocks, but when turned into pasture, the sheep devour it.

RDQ65. You say that the sheep eat it up?

A. Yes, before anything else.

RDQ66. Do they put the sheep to pasture in the properties of the Hospitals of Grenoble?

A. Each meadow is filled according to its size; at Bovinon, a pasture of the Hospital, they put 800 sheep to graze.

RDQ67. And you say that the sheep are very fond of vulnerary? 291

A. Ah, yes.

RDQ68. And that where the sheep are it cannot come to flower?

A. Rather not; they exhaust it, it disappears as it—

RDQ69. And in the region which is called Bovinon, are there any places where vulnerary can be harvested?

A. In the part belonging to the State.

RDQ70. In the part belonging to the State? Why?

A. Because there is no grazing there.

292 RDQ71. Because grazing is not permitted there?

A. No, the State forbids the grazing, and protects the zones which are bare of wood, which are of rocks.

RDQ72. Where are the Echaud and the Eparres?

A. Just a little to the West, to the West of Bovinon, to the Northwest, it is separated— It is a little hill, a little dale.

RDQ73. To whom do they belong?

A. They also belong to the Hospital, it is still Bovinon, The Hospital surrounds the State, the pastures go all round the State.

293 RDQ74. Does one find vulnerary in that part of the Echaud and of the Eparres which belongs to the Hospitals?

A. The Hospital has nothing in the Echaud and the Eparres.

RDQ75. I understood you to tell me that that belonged to the Hospital?

A. Between Bovinon and the Echaud and the Eparres, it is the same property which is crossed by the rocks, on one side the Eparres, on the other side, the Echaud.

RDQ76. Does that belong to the Hospital or to
294 the State?

A. The Echaud and the Eparres belong to the State, but between this property there and Bovinon there is a dale belonging to the Hospital of Grenoble which is at Bovinon; it is there where the cattle is sheltered, there is a shelter—

RDQ77. Do the sheep graze in the property of the Hospital between the Echaud and the Eparres?

A. The sheep graze on all the property of the Hospital, everywhere, it is all pastures.

RDQ78. Is vulnerary found in the parts—the region of the Echaud and the Eparres which belong to the State?

A. Yes, yes, some is found, but it is the last you get, for it is very far, that. 295

RDQ79. Where is the Collet?

A. The Collet, that is to be found at—six or seven kilometres from the Convent in coming away from Grenoble at the summit of these meadows of Malamile, at the limits of the Hospitals of Grenoble and of the State, in the little pass which goes from one side to the others. There is a little road there.

RDQ80. It is a road overhung by rocks on both sides?

A. It is a road which winds, which goes in zigzags and makes a tour of the mountain, a road two metres wide, where they drive the oxen and the sheep. 296

RDQ81. You say that a part belongs to the Hospital?

A. Yes.

RDQ82. And the other, the greater part?

A. The greatest part belongs to the State, the meadow of the Collet is a continuation of the meadow of Malamile which belongs to the State. It is continued on one side by the meadow of Malamile which belongs to the State, and on the other side by— 297

RDQ83. Have you seen vulnerary grow in this region?

A. I have even gathered it, which I have carried away.

RDQ84. Where is it that it grows?

A. In the rabbit burrows, stony places, on heaps of stones which are detached from the mountains by the thaws in the spring, they form in the hollows heaps of stones. There is hardly any earth, a few dead leaves which fall to the ground, that is where vulnerary grows.

298 RDQ85. Does it grow as much in the Hospital and in the State?

A. Ah, it would grow as much in the Hospital and in the State if there was the surface, but the State as much more of it in this part.

RDQ86. There is a little which grows in the part belonging to the Hospital?

A. Yes, necessarily.

RDQ87. There is a little?

A. Yes, there is a little. It is even very abundant for the size, but the State being much larger, necessarily it is—

299 RDQ88. The forest keepers have testified that the 19/20ths of the vulnerary grow in the State, is this exact?

A. About—about. It has not been weighed, but still it is a little near that, because it comes out of the State a little on the borders, directly after it is the private people who put cattle to graze or else they are the lower woods. The bottom is more wooded. and being more wooded it no longer grows, and if it is bare, it is sheep pastures, it is grazed on, it does not come.

RDQ89. Have you made any researches on vulnerary?

300 A. Yes.

RDQ90. Have you—have you asked yourself what is the latin name for vulnerary?

A. The latin name is the hypericum nummularium, "millepertuis" (hypericum).

RDQ91. You look at the contents of this box and tell me what it is?

A. I can open it?

RDQ92. Will you look at the contents of the box and tell me what it is?

A. It is the vulnerary of the Carthusians, which is the hypericum nummularium, grown in our re-

gions. It is that, and there is another very similar to this, of which the leaf is a little oval, not so round as that. 301

By Mr. Kelly: I will get you a stronger box. This gentleman has just come from Grenoble and I have not had the time.

The Witness: It is the vulnerary of the Carthusians, called "venerelle" by the peasants, vulnerary by the Forestry Guards. Its botanical name is hypericum nummularium "millepertuis nummulaire." And it is in good condition, that.

By Mr. Kelly (To the Commissioner): I am going to mark that: will you give me the letter. 302

(The box is marked Exhibit No. 2.)

RDQ93. What other name does it bear?

A. This plant? In the region it is commonly called "venerelle" by the people who do not speak French; those who speak French correctly ask for it in French under the name of vulnéraire (vulnerary) and it is known in French under the name of vulnéraire, and in the dialect of the region by the name of "venerelle." 303

RDQ94. Have you made any researches on the plant which is called "mille pertuis" (vulnerary) and which grows in the group of the Grande Chartreuse?

A. Yes, I have made researches even on that plant, I have enquired.

RDQ95. Will you look at the contents of this box and tell me what it is?

A. It is the ordinary vulnerary which comes from our region it is scented in certain parts, in others it is not, there is no special place for that;

304 in the same part of a region, according to the ground, it is scented and it is not, as much in the State as on the property of private persons.

RDQ96. Which is the most scented, the "mille pertuis ordinaire" or the "vulneraire?"

A. The most scented, that which has the most perfume? In my opinion this is more scented, but there is not the same delicacy, it has more perfume but its scent has not the same strength.

RDQ97. Do you know which was the most sought after by the Carthusians?

A. The nummulaire.

305 By Mr. Bonnet: I would ask that it be stated more precisely; the witness says: this and that, he does not designate the box.

RDQ98. Will you name the two and tell me which of the two, by naming them, is the most scented?

A. That which has the most perfume and the least delicate perfume, is the "mille pertuis ordinaire" (ordinary vulnerary), and that which has the most delicate perfume, is the "nummulaire" which was the most sought after on the condition
306 of it being gathered with the flower.

RDQ99. Have you looked for other witnesses to confirm the testimony of Mrs. Grenier and Mrs. Merlin?

A. But upon my word, I have tried, yes,—that is to say I have questioned many people on the plants that the Carthusians had harvested, where they got them from, and I got all the necessary indications so long as the persons thought I questioned them, that I questioned them for the purpose of entrusting them to supply us with plants. But on coming to the point of asking them if by chance

they were willing to testify before the judges what 307
they had just said, then, no— We would no longer testify at all, we wanted nothing— If you want to find plants we will supply you with same, but testify, no— Therefore, I did not let the object of my investigation be known.

RDQ100. Did you ask why they did not wish to testify?

A. Ah, yes.

RDQ101. What was the answer?

A. Without asking for it even—I had not to ask for it, by simply and flatly refusing me, by flatly and simply declaring that they would not testify 308
they said; upon my word, the people who have gone away might come back, if they return those who have caused them any prejudice will be paid out. If also not coming back, there are in the regions industries which are specially known as belonging to the Carthusians, we have there members of our family, here it is my husband, there is my son, there my daughter, all these would be sent away.

RDQ102. Do you know what industries they referred to when they said they belonged specially to the Carthusians?

A. They allude not to two distinct industries, there is only one or two, but these two, they are the 309
same thing, it is the same manager, it is the manufacture of busks for corsets of Saint Laurant du Pont and the manufacture of files. Those are the two.

RDQ103. To whom do they belong to-day?

A. These factories belonged to the Carthusians in the interposed person of the apparent owner, who was Abbot Rey, and which were farmed to Mr. Pature Nicolet, and leased. The lease has still seven years to run, it finishing in—five years, it finishes in 1912. Yes, there are 5 years, 1912.

310 **RDQ104. Is it Mr. Nicolet who works these industries?**

A. Mr. Pature Nicolet, who was already tenant of the Carthusians under Abbot Rey—the lease has continued, the goods are sold, he has become the purchaser, owner. Well, the general idea of this region is that he has again bought same for the Carthusians that is why one can get nothing out of them. Nevertheless, if you did like me, you questioned them without saying why, they would say what they told me. If you say—take their testimony they will say that they have said nothing.

311 **RDQ105. About how many witnesses have you seen who have confirmed the testimony of Mrs. Merlin and Mrs. Grenier?**

A. I have seen 15. I stopped there.

RDQ106. Will you give their names?

A. I could give you their names, but I would not like to do them any harm. I would give them very willingly, but it would be confidential amongst you, gentlemen, for I would not like to harm anyone, to go and spoil their—

RDQ107. Is there a trade in plants at Grenoble?

A. There are herborists at Grenoble, who make a business of plants.

312 **RDQ108. Can you let me know a few persons who supply plants?**

A. At Grenoble?

RDQ109. Not at Grenoble in the Group of the Chartreuse?

A. Oh, I will let you know some perfectly well, a very little while ago, not two years yet, we had a woman called Fournier, who supplied a great deal to Grenoble, to Voiron, to Lyons, to herborists.

RDQ110. Does she still supply same?

A. No, she has left the region, she was burnt out, she was a commission agent, she attended to forwarding for one and another, and she bought plants

that she forwarded to Grenoble, to Voiron, that she forwarded on to Lyons. After the fire she ceased, she no longer follows the business. We have now one named Gardel, of Saint Joseph de Rivière, one named Rey, at Saint Joseph de Rivière, there is also another lady named Geneve who attends to the harvesting. We have— Cardelle sells, as it happens, to Mr. Lance, now replaced by Mr. Desroches. That is his buyer. 313

RDQ111. Do you know to whom they supply plants?

A. The purchasers of these plants? A little to those who ask for same—I cannot say everybody. 314

RDQ112. I do not understand?

A. A little to all those who ask for them.

RDQ113. You do not know who asks for them, what customers they have?

A. These herborists? But what do you mean by herborists? There are some who buy from the plant seekers of the region; let us understand—

RDQ114. Do you know why one goes to them to ask for plants?

A. Upon my word, because I find in that—I think it is because there are found there plants with a bouquet with a perfume which is perhaps not found everywhere. 315

RDQ115. Do you know a Mr. Gontard?

A. Yes, sir.

RDQ116. Have you lately been put into relations with him?

A. I had a visit from him on the 17th of this month, at 7 o'clock in the evening.

RDQ118. Who—?

A. Liqueur distiller of Lyons, 47 Rue des Charmettes. He came to ask me if I had not in view a building to be sold, he wished to purchase something at Saint Laurent du Pont, to cultivate plants for liqueurs.

316 RDQ119. Did he explain why he desired to purchase some land in your parts?

A. He happened to tell me that he had some land at Lyons where he cultivated these plants for liqueurs but that he had not the quality that was necessary he had the plant but not the quality he wished, and as I had not in view what was needed I referred him to Mr. Parendel, bailiff, who does like me; he attends a little to buying and selling from time to time, he had nothing either.

RDQ120. Have you ever seen the plants manipulated at Fourvoirie?

317 A. But I have seen that every year, two or three times.

RDQ121. On what occasion—?

A. For 13 years.

RDQ122. On what occasion did you enter into the factory of Fourvoirie?

A. I have entered—I did not go there to make visits for politeness nor for pleasure, I went there on business.

RDQ123. What business?

A. I was employed on the Commission of Public Roads and Bridges, because the Commission of Departmental Public Ways was formerly governed
318 by a special service of the Department, then it was amalgamated with the Bridges and Highways, and then it went back again—at the present time it is amalgamated.

RDQ124. And you went to Fourvoirie for the needs of your service?

A. For the needs of the service. That is to say that at Fourvoirie there was at that time when I was in the service, in 1896, at the distillery, some iron works which are to-day replaced by the file factory and the manufacture of wood pulp. The cement factories were already there, factories which turn out a great deal of work, which completely

damaged the roads. Therefore there factories were specially taxed for the roads. Well they were not all at the same rate, I went to ask for their accounts to know the weight of the goods transported by them, so as to share proportionally between the three factories the extra expense. When that was done, I returned to give an account of the assessment, to have it accepted, if they did not protest and it was an opportunity for talking a little with the monks, with the workmen that I knew. 319

RDQ125. Did you sometimes see the plants manipulated at Fourvoirie?

A. Oh, upon my word, I have seen it lots of times but I did not take any notice of it. 320

RDQ126. Did you ever remark anything extraordinary in the working of the plants?

A. Some were ground by the mill, others were infused in the recipients, basins, others were simply pounded.

RDQ127. Were the plants worked in the dry state or in the fresh state?

A. I have only seen but once, I do not know if there was one plant or two, and what was the plant, or the plants, whether there were several of them. I once saw a manipulation of green plants, or nearly green—once like that, that could have been done at other times that I have seen. 321

RDQ128. What is it exactly that you saw on this occasion?

A. A stone basin, in which was a green paste—I believed and still believe that it was the same plant as was at the side, that they had pounded.

RDQ129. There were plants at the side?

A. Yes.

RDQ130. Were they in the dry state or green?

A. Green or nearly green?

RDQ131. And the color of the paste was green?

A. Was green.

322 RDQ132. Do you know a plant which is called the imperatoria?

A. Yes, I know it a little.

RDQ133. Do you know if the Carthusians made use for it?

A. The imperatoria—I know the root better than the plant. I would not know the herb, but I know the root. I do not know the plant, but the root I have seen in the hands of Carthusians who gathered it. I have even taken it, felt it, I have cut a small slice which I ground between my teeth—as they took it is was not to poison anybody with, it was for a use of some kind, I have tasted it.

323 RDQ134. What taste did it have?

A. It is a peppery root with a little perfume, which has which has a slight resemblance to the hotness of pepper; it is a peppery plant.

RDQ135. Is this plant found in abundance in the region?

A. It had disappeared some time ago, it is coming up again.

RDQ136. Do you know whether the imperatoria has been replaced by anything else?

A. One was obliged to replace it, there was no more of it.

324 RDQ137. Do you know what was put in the place of imperatoria?

A. I suppose that one had to put in its place peppery mint, or else Chinese cinnamon, which is also a spice.

RDQ138. Do you know if the Carthusian Fathers specially cared to have imperatoria?

A. They looked for it themselves, it is only through them that I know it—the Brothers, not the Fathers.

RDQ139. Have you seen them picking it?

A. The first time that I saw it was in the hands of some Brothers, who had a little parcel of it. As

one chatted at that time with the Carthusians, 325
there was nothing to prevent that I took the liberty of asking them what they were carrying, what they were looking for. It was at that time, that I knew of imperatoria, its taste. I did not know that it existed.

RDQ140. Have you made researches in the Pyrenees on the subject of vulnerary?

A. Yes.

RDQ141. What were there researches?

A. These researches? I asked in the first place, at Tarbes, of Mr. Marcassus, druggist-herborist, to kindly send me a sample, a specimen of the "mille pertuis nummulaire" botanically called, in Latin, 326
hypericum nummularium, saying that I very much wanted to get a sample of this product coming from the region and in the mountains to compare it with the same product taken in our region, and to find out if one could harmonize it with ours for any business purpose—I cannot tell the matter to anyone at once. Where upon Mr. Marcassus answered me that this plant is abundant in their part, but the country is flat, and that I could ask for it in the mountains of a Mr. Claverie, chemist at Luz, a region 30 kilometres distant from Tarbes, that there I could find it. Well, that done, I write to Mr. 327
Claverie in the same terms as I wrote to Mr. Marcassus. I changed only the name of the person to whom the letter was addressed, the body of the letter is the same. I write then to Mr. Claverie at Luz, Hautes Pyrenees, the same letter as I had written to Mr. Marcassus, asking him precisely for the "mille pertuis nummulaire" the hypericum having as botanical name hypericum nummularium. A few days after Mr. Claverie replies to me by letter that he has not the plant, that he is having it looked for among the peasants of the mountain, but that at least the plant is highly considered as having

328 great curative value, which leads me to believe that the peasants use it as a medicinal plant but that the chemist has not got it as such.

RDQ142. Did you claim a sample from him?

A. I already claimed a sample from him at that time, by that letter.

RDQ143. Did he send you a sample?

A. He told me already that he was having it looked up and as soon as he had it he would deliver it to me. I replied by return of post that he should make every effort that if the sum of 3 francs sent to pay for the search was not sufficient I would add the rest. He sent me a sample.

329 RDQ144. Is that there the sample?

A. It is the sample which he sent me and which still bears the address of the person who sent it to Mr. Claverie. Here is the address: "Sent by Mr. Claverie, chemist at Luz, to Mr. Dondey," and there "Sent by Mademoiselle"—I cannot make it out, "to Mr. Claverie, at Luz Saint Sauveur." It is covered by the stamp, at Luz Saint Sauveur. They have struck out this address and put the other, and I received it like that, without a letter, without anything. I find before me "mille pertuis ordinaire" (ordinary hypericum).

330

By Mr. Bonnet: I make an objection as to the identity, for this parcel is simply closed and tied by a string.

By Mr. Dondey: Ah, it came like that, sir, as a sample, like all those I address.

By Mr. Kelly: I produce it now for identification, leaving it to be identified later.

By Mr. Dondey: (Witness) I asked myself, in my mind, for the nummulaire, and I said "nummulaire" in my letter, and they sent me this. Is it that they have not got

the nummulaire or do they call this nummulaire? That is what I do not know. 331

Recross-interrogatories by Mr. Bonnet, representing the Plaintiffs:

RXQ1. Can I look at the map which has been handed in by Mr. Dondey?

(Mr. Bonnet takes the map.)

By the Commissioner: Exhibit No. 1 of Mr. Kelly.

By Mr. Bonnet: I will take the liberty of pointing out to Mr. Kelly, if my memory is correct, that at the time of the examination of Mr. Boiton this map was shown, which—at least I think it is this one—Mr. Boiton made some objections to as to the exactness of the map, and I asked Mr. Kelly at the time if he proposed to put in this map, in the hands of the Commissioner, as it was. Mr. Kelly replied that he had not the intention of putting it in, that it was simply as means of identification that he furnished it and that he would hand it in subsequently. It is, in fact, at the time of the first examination of Mr. Dondey that this map has been handed in to the Commissioner. I simply want to make this observation as it would seem from the mention which has been made on same that it was handed in to the Commissioner at the time of the examination of Mr. Boiton. My observation may be of no importance, but still as it conforms to the facts I ought to make it and have it recorded, 332 338

By Mr. Kelly: As a reply to the observation of Mr. Bonnet, I will ask Mr. Dondey whether this map was made by him.

334 By Mr. Dondey: Yes, sir, I affirm it.

By Mr. Kelly: Is it exact?

By Mr. Dondey (Witness): It is exact—how one does them in a similar case. It is not a map made in order to exactly and mathmetically determinate the extend of the properties but sufficiently near for the purpose of the circumstances. It is not a question of knowing if we pass there by a line of the thickness of a thread, it gives the whole of the property, but is not mathmetical to just a yard or so.

335 By Mr. Kelly: Therefore I now formally produce it and ask—

By Mr. Dondey (Witness): Any more than the map which is produced there is more mathmetical then the rest.

By Mr. Kelly: Will you please designate the map: "Not more than the map produced there"—this marked "Q?"

By Mr. Dodney (Witness): I will add even, if you like, that the difference of one millimetre from one point to another in these maps, that represents 80 metres in distance.

By Mr. Kelly: In the map marked "Q"?

336 By Mr. Dodney (the witness): That, the Ordinance map, whether it be "Q" or anything else—they are all the same, to the 80,000th part.

By Mr. Bonnet:

RXQ1a. Mr. Dondey, two witnesses, Mr. Feige, and Mr. Georges, Forest keepers, have declared that the gathering of Alpine plants was forbidden by a Profectoral order of 1896. Do you know of this Profectoral order?

A. Yes, I have it in my hands; it is not 1896 but

1900, if my memory is good, signed by the Prefect Nano. 337

RXQ2. So, according to you, there was no order in 1896?

A. No, 1900, I think, if my memory is good, but I may be mistaken as to one year as well as those gentlemen, who, not having been posted on the matter may not remember to a year or so.

RXQ3. Do you know botany?

A. Not very much, very little.

RXQ4. Have you made any studies?

A. Some researches, but very little, I do not call myself a botanist. 338

RXQ5. Just now you gave the scientific name of a species of vulnerary—

A. Yes.

RXQ6. That seems to indicate that you have some botanic knowledge?

A. No, I have looked it up.

RXQ7. It is then in books you have searched?

A. Books which are not at home.

RXQ8. You have said that there were two sorts of vulnerary, you have produced them both; one the "mille pertuis vulnénaire" (vulnerary hypericum)—

A. I beg your pardon, I said two sorts of hyperi- 339
cums.

RXQ9. I mean to say hypericum; one, the vulnerary hypericum the other, the ordinary hypericum. You said that the vulneray hypericum had as scientific name "hypericum nummularium?"

A. Hypericum nummularium.

RXQ10. What is the scientific name of "mille pertuis ordinaire" (ordinary hypericum)?

A. It is hypericum, I think, that is the name that was given to me by the University, it is there that I made my investigations.

340 RXQ11. What is the scientific name of "mille pertuis ordinaire" (ordinary hypericum)?

A. Scientific, in latin or in French, I do not know we call it "mille pertuis" it is mentioned in botanical words as "mille pertuis" (St. John's Wort).

RXQ12. You have told us that there were two sorts of "mille pertuis" (hypericum)?

A. Quite so.

RXQ13. You have given to one of the "mille pertuis" a scientific denomination, and I ask you for the scientific denomination of the other "mille pertuis" which you have called "mille pertuis ordinaire?"

341 A. It is the plant which is called by everybody and the botanists even "mille pertuis," and the other "mille pertuis nummulaire."

RXQ14. You therefore do not know the scientific name of the "mille pertuis ordinaire?"

A. I would not have known it if I had not looked it up.

RXQ15. I ask you what it is?

A. Let us understand each other properly: scientific name— It is necessary that we should understand one another.

RXQ16. Will you give me the name in Latin of

342 the "mille pertuis ordinaire?"

A. I tell you: hypericum, that is the name that was given to me.

RXQ17. Then it is not the complete name?

A. I do not know Latin—thus we had the vulnerary, in our part "venerelle," as you say, it was known under that name, its name is quite different. In any event I produce the plant.

RXQ19. When you asked, sir, in the Pyrenees whether there was not any "mille pertuis" what name did you give to the "mille pertuis" for which you asked?

A. When I asked in the Pyrenees, I went to

Grenoble, to the University, where I know a professor of botany, Mr. Lachmann. I found him accompanied by another professor. I had taken with me the sample of vulnerary which you have there, the nummulaire, to see treatise of botany, if I found same in it. At first sight these gentlemen called it Hypericum Nummularium. Thereupon they went and looked in some books where we found it. The book said: "This plant grows at the Chartreuse and at Saint Pierre d'Entremont, Canton of Echelles, and also on the Central Pyrennes and the mountains in the North of Spain." That is what botany indicates. 343

RXQ19. I again put the question to you, to which you have not yet replied. 344

A. I believe I am answering it.

RXQ20. When you wrote to Marcassus and to Mr. Claverie, in the Pyrenees, and you asked for a "mille pertuis," which "mille pertuis" (hypericum) did you ask for?

A. The "mille pertuis nummulaire," hypericum nummularium, which was the name in the botanical works of the University at Grenoble, the name given at the University of Grenoble to the nummulaire. I take the name from the treatise of botany and I send it to a gentleman. 345

RXQ21. Do you think that the person to whom you applied had any special botanical knowledge of this plant?

A. I do not know, I cannot know. I applied to a druggist-herborist who has not got it, he knows it, by letter he tells me to apply to a Mr. Claverie, chemist at Luz, who is in the mountains, who is able to get it. I applied there on the advice of Mr. Marcassus, whom I do not know, he does not know me either. I write to Mr. Claverie, whom I do not know, who knows me no better, I ask him for the hypericum nummularium, a name I had obtained from a book on botany at Grenoble.

346 RXQ22. In your answer a while ago you said that Mr. Claverie, in his letter told you that he was going to have the plant looked for among the peasants.

A. Quite so.

RXQ23. At what time does the plant appear in the mountains?

A. I do not know whether it is the same in the Pyrenees as in our part; it is in August, but he clearly tells me in his letter that he is going to look for the dry plant, that he thinks he will find it, but if I could wait for the new plant—he says that.

RXQ24. Can you produce this letter?

347 A. Perhaps,—yes, I must have it. He clearly tells me that if I can wait for the fresh plant it will be more convenient.

By Mr. Bonnet: We are going to wait—I think that Mr. Kelly has the letter.

By Mr. Kelly: No, it is at my office, I am going to send for it.

RXQ25. At what period did you write the letter to Mr. Claverie?

A. There are two of them; I think I wrote one
348 on the 17th and one on the 19th of this month.

RXQ26. Of the month of April?

A. Yes, the month of April. Mr. Marcassus— I do not remember very well—but there was an interval of a few days, the time to go and come back. No one had ordered me to do it but I wanted to know if the plant in our region represents the other if it is the same, if they correspond. As I find, at least, in book on botany at Grenoble that this plant grows at Grenoble and in the Pyrenees, let us see whether anyone will know it. I cannot apply to others but a chemist and herborist.

RXQ27. You spoke to us a while ago, sir, of the Ruchère?

A. Of the Ruchère? 349

RXQ28. To whom does the Ruchère belong?

A. I am likely to have already stated that it belongs to a number of citizens who are of the parish of Saint Christophe between two Guiers. It is four little hamlets which are dependences of the parish of Saint Christophe; they have a Muncipal Section, they have their "état-civil."

RXQ29. Is vulnerary found on the Ruchère?

A. On the place itself—vulnerary—No, sir.

RXQ30. On the Ruchère. I did not say on the place?

A. On the territory of the Ruchère you mean? 350

RXQ31. On the territory of the Ruchère?

A. If any is found, it is on the borders of the State, on the borders of the Canton of the Alienard which separates the domain of the State from the Ruchère, that Canton dominates the Ruchère.

RXQ32. Could you tell me where is Saint Pierre d'Entremont?

A. I could take you there with my eyes closed.

RXQ33. That is in the domain of the State?

A. Oh, I think not; Saint Pierre d'Entremont is a parish that has its territory of its own, there are 200 electors, that represents 700 inhabitants. There you are. 351

RXQ34. Do the other summits of the Alpette belong to the State?

A. The other summit of the Alpette? Yes, that continues by private and parish summits.

RXQ35. Is the part of the high summits of the Alpette which belongs to the State as important, comparatively, as those which do not belong to it?

A. Upon my word, it is about the same—perhaps the Savoy part, the Savoy part—no, Isère—it is Savoie on one side, on the North declivity, and Isère on the South declivity—it is perhaps larger as summits, but however as escaping from the sum-

352 mits the part belonging to the State is much larger —the part belonging to the State is the Haut du Seuil, Malissart and the Ranchée. Those are the special names. The Haut du Seuil is continued by the Alpette.

RXQ36. Will you allow me. I will put the questions to you and we go on. Where is the Haut des Cieux situated?

A. The Haut Seuil?

RXQ37. The Haut des Cieux?

A. It is the geographical name; the Haut du Seuil: the Haut des Cieux is the name of the peasants of the region.

353 RXQ39. To whom does this part of the territory belong?

A. To the State.

RXQ39. Entirely?

A. Yes.

RXQ40. You are sure of it?

A. Yes.

RXQ41. You affirm it?

A. Yes.

RXQ42. To whom does Vale Froide belong?

A. Valle Froide is far from the Haut du Seuil.

RXQ43. I do not ask you whether it is far or

354 near, I ask you to whom does it belong?

A. I do not know to whom it belongs.

RXQ44. Is it situated in the Group of the Grande Chartreuse?

A. In the Group—yes. It borders on it in any case— I do not know those things.

RXQ45. Do you know Autran?

A. I do not know Autran, but I know where it is geographically.

RXQ46. Is it in the Groupe of the Grande Chartreuse?

A. No.

RXQ47. Where is Bellefond?

A. Bellefond, that is in the Dent de Crolles. 355

RXQ48. Is it in the Group of the Grande Chartreuse?

A. It belongs to the Hospital of Grenoble. It touches the Haut du Seuil.

RXQ49. Is the Mount Grenier in the Group of the Grande Chartreuse?

A. Neither. It prolongs it but that is Savoy, that.

RXQ50. Will you answer me? Is it or is it not in the group of the Grande Chartreuse?

A. Continuing the group indicated as I have said just now, it is in Savoy, it is no longer there.

RXQ51. Therefore it is not in the group of the Grande Chartreuse? 356

A. No, it is not there. It is a mountain which continues on, it is Savoy, formerly—

RXQ52. To whom does the Mount Grenier belong?

A. I do not know. In Savoy, I have never been, I have passed around, but I do not know to whom it belongs.

RXQ53. You have told us, sir, that you have asked for all the information which you have given about the plants from different persons of the region? 357

A. Yes.

RXQ54. And that these persons had refused to come and testify because they feared—

A. They have not refused as I have not invited them; I asked them whether they would be willing to declare before the judges, they told me "No," but I did not invite them, I simply made the proposition to them, it was not an invitation, it was a question of sounding—

RXQ55. You told us also, sir—I see your expression—that the general idea was that Mr. Pature Nicolet had bought the factories, which belonged

to Father Rey, on behalf of the Carthusians?

A. That is the opinion, but it is not a proof, it is the opinion which is current.

RXQ56. It is the opinion which is current?

A. It is the opinion which is current.

RXQ57. Then you base your point of view on a report?

A. On a report that is to say on the opinion given me by persons I have seen, I do not affirm it to you that Mr. Pature Nicolet had purchased for the Carthusians, but it is the opinion of everybody.

RXQ58. You told us lastly, sir, that when the Carthusians were at the Grande Chartreuse you went into the factory of Fourvoirie?

A. Yes, sir.

RXQ59. And that there you saw the manipulation of the plants done?

A. Sometimes, an instant, not for long—I did not remain there to watch them do it.

RXQ60. Therefore one could go inside just as one pleased?

A. No, the entrance was forbidden, but I entered because I went on business, and after all, just the same, some were sometimes polite enough to receive people properly. And I ought even to add—the question has not been put to me—I have asked to visit it in order to please friends, friends who came to see me, who wanted to see the region, and I took them to Fourvoirie in order to see the factory for I knew a monk who did not refuse me. I took them, I asked them to kindly allow my friends who had come to visit the factory, there is nothing more interesting in the region. Two or three times they have specially shown some friends I had over it, and I with them.

RXQ61. You know how jealous the Carthusians have always been of keeping the secret of manufacture?

A. I do not know—I do not know— 361

RXQ62. And you entered you say, into this factory with the greatest facility, and took friends there?

A. Remark—accompanied by monks. I visited it, stopped before such and such a thing, speaking sometimes of quite other things that what I saw, I looked around but I did not pay much attention. It was not a facility but a favor, a result of acquaintanceship. I made use of it when I had an opportunity for business or to do a service to a friend; permission to visit the factory was not refused to me even by the Superior of the Community. You cannot prevent some one from going against the 362 rules.

RXQ63. And you went into the factory and you were present at the operations of manufacturing the liqueur?

A. No, I passed into the factory, I passed in and visited it during the manipulation, but I did not stop for the manipulation. I visited without stopping for the manipulations. I did not go to visit it to see what they did, visited the installation, its size, arrangement, but not their work, I saw it in passing.

RXQ64. What was it you saw, sir? 363

A. I saw all the buildings, the cellars, the installation of the casks, of the distilling, the mills working, workmen pounding plants, and that in passing.

RXQ65. And what else?

A. And what else?—nothing else. What did you you want me to see? The stills working people corking bottles, others who filled them, others who tarred them, here, one sees the plants, there one received them, them one refuses them—

RXQ66. You have told us, sir, that a plant, the imperatoria, was of great interest to the Carthusians?

364 A. That is what a monk, who was picking it, told me.

RXQ67. Did he say why he picked it?

A. No, I did not ask him what he did with it, he had not to tell me, but he attached some importance to it.

RXQ68. Do you know for what use this plant was intended.

A. No. They did not make many things, I do not know whether it was for Chartreuse or anything else, I do not know for what they used it.

RXQ69. What did you do before you followed the profession of geometrician?

365 A. I have already told you that I was employed at the Commission of Public Ways, at the Bridges and Highways. The two services have amalgamated, that lasted 15 years, from 1881 to 1896.

RXQ70. You left the Administration of Bridges and Highways in 1896?

A. Yes, in June.

RXQ71. For what motives did you leave?

A. It was my wish, I had no motive.

RXQ72. There was no particular reason which made you leave the Administration?

A. No, sir, I resigned.

366 RXQ73. Were you not called upon to give your resignation?

A. No, sir, no, sir.

RXQ74. Did they give you a certificate when you left the Administration?

A. I did not ask for one. They gave me an order relating to my resignation, a Profectoral order relating to my resignation three weeks after I had given it, there was nothing at all, absolutely nothing.

RXQ75. You have never had from your chief a certificate stating under what conditions you had

remained under their orders when you were with the Administration of Bridges and Highways. 367

A. If I had asked for it I should have perhaps had it. I did not ask for it, I had no reason to ask for it. I am at home, in my own region, I am known, I have no need of a certificate. I was employed in my own region, I was not in a strange region, I was at home, 13 years at home, therefore, I had no certificate to ask for, I was with my family. If I had been in a strange region I should have wanted a certificate, but in the midst of my family, surrounded by my relatives and friends—

368

By Mr. Kelly: Will you wait a minute, they have gone to fetch the letter.

By Mr. Kelly: Mr. Dondey, is that the letter you wrote? In reply to the question of Mr. Bonnet, is that a copy of the letter which you sent to Mr. Marcassus?

By Mr. Dondey (witness): It is addressed to Mr. Marcassus himself.

By Mr. Kelly: Will you sign it? Is that the reply which you received from Mr. Marcassus?

By Mr. Dondey (witness): That is it, yes. 369

By the Commissioner: Will you sign it?

(The witness signs the letters which are annexed to the Commission marked Exhibits 5, 6 and 7.)

By Mr. Bonnet: I remark that Mr. Marcassus, in his reply, speaks of the hypericum and not of the hypericum nummularium.

By Mr. Dondey (witness): Look at the letter, what it says.

By Mr. Kelly (to Mr. Dondey, witness): I beg of you, no discussion, you know. Is

370 this the reply and the envelope which you received from Mr. Claverie?

By Mr. Dondey: Yes, "Saint-Sauveur" that is it, that is the reply of Mr. Claverie which I received, because Mr. Claverie I addressed the same letter to him.

By Mr. Kelly: Will you sign it?

(The letter is signed by the witness and annexed to the Commission, marked Exhibit No. 8.)

By Mr. Bonnet: I remark also that in the reply from Mr. Claverie there is simply mentioned "mille pertuis" and not hypericum
371 nummularium or "mille pertuis nummulaire."

(The session closed at 3:30 P. M. The Commission is adjourned to the following day, Thursday, April 26th, 1906, at 2 P. M., for the continuation of the examination.)

Re-redirect-interrogatories by Mr. E. Kelly, representing the Defendants:

RRDQ1. Mr. Dondey, is that the telegram that you sent to Mr. Claverie, druggist at Luz?

372 A. Yes, I sent a telegram.

RRDQ2. The 25th of this month?

(Mr. Dondey reads the telegram that Mr. Kelly hands him.)

A. This is certainly it, sir, that is certainly it.

By the Commissioner: Will you sign it?

By Mr. Bonnet: What are the contents of the telegram?

By Mr. Kelly: It is not necessary that the stenographer should take it down, I am going to have it annexed to the Commission.

Mr. Barbancey: dictates to the steno- 373
grapher: "Mille-pertuis that you have sent
"me is not Hypericum numularium. Has
"Hypericum Numularium a commercial
"value, have you ever been asked for it. If
"not would you be disposed to come at my
"expense to Paris on Sunday to testify on
"Monday in the enquiry being held here.
"Will send you funds. Reply to Kelly, 82
"Boulevard Hausmann, Paris.—Dondey."
"Address: 82 Boulevard Hausmann, Char-
"treuse G. 25/4/1906."

By the Commissioner: Will you sign that 374
please?

RRDQ3. Is that the telegram you received in reply?

(Mr. Dondey reads the telegram Mr. Kelly hands him).

A. Yes, that is certainly what I received, it is certainly that.

By the Commissioner: Will you sign?

By Mr. Barbancey: Can I read it out? 375

By Mr. Kelly: If you like. It is not the custom, I will give you a copy.

By Mr. Bonnet: It is in order that it should figure in the testimony.

By Mr. Kelly: The exhibits are not dictated to the stenographer.

By Mr. Bonnet: It is not from that point of view; as we are going to have this copy we shall also have at the same time a copy of the request. It is simply from that point of view.

Mr. Barbancey dictates to the steno-

376 grapher: "Have sent Hypericum perforatum, only species known here, other never asked for. Impossible to accept invitation, sorry. See my son soon, druggist, rue Saint-Sulpice, 6 trés ferré (well posted) signed Claverie. Dated 25th April, 1906."

RRDQ4. Have you seen the son mentioned in the telegram?

A. I have just this moment seen him, he came up stairs with me, he is in the next room, I have just this moment found him, I have not yet had the time to talk with him.

377

Re-recross-intrrogatories by Mr. J. Bonnet, representing the Plaintiffs:

RRXQ1. I take this opportunity to put some questions to Mr. Dondey. Will you tell me who got you into the Administration of Bridges and Highways?

A. I made an application to Mr. Pichat, who transmitted it to Mr. , who was road surveyor of the Canton, who forwarded it to the Chief Road Surveyor; I waited my turn.

378 RRXQ2. Who is Mr. Pichat?

A. At present Mayor of Saint Laurant du Pont, Counseillor General and Deputy.

RRXQ3. What connection has he with the Carthusians?

A. As long as he was road surveyor at Saint Laurant du Pont he had several occupations, he attended to the business of the Carthusians, he was their architect, he did work for them, building work private agencies, and finally the work became so plentiful that he was obliged to give up holding both positions, both works, he gave up his duties as road surveyor and devoted himself exclusively

to the services of the Carthusians, until the moment when he was named Deputy, and I believe he still does it. 379

RRXQ4. Cannot you make known to me the names of the persons, the 15 persons whom you have seen and of whom you have asked details concerning the gathering of plants in general and vulnerary in particular?

A. I have told you that there would be no difficulty about that, but, however, I would not like to expose them to any harm, to repentances, to recriminations. If I knew that it would be absolutely confidential and discreet there is no difficulty, but if the names must be made public, I refuse. 380

RRXQ5. What basis have you for declaring that those persons would be the objects of reprisals?

A. That is what they fear. You would not like me to compromise anyone's means of existence.

RRXQ6. You cannot, then, make known the names of these persons?

A. If it is confidential, I will tell, if it is public I will not tell. Make a promise that it will be confidential, and there will be no difficulty. I told you why yesterday. 381

RRXQ7. Do not forget that your testimony rests on the declarations of these persons. You have sworn to tell the truth, and consequently to enlighten justice. The names of these persons might be useful. I put the question to you again.

A. But I tell you again that I cannot make known those persons.

RRXQ8. I put the question to you afresh. You refuse—

A. Officially, yes—confidentially, no. If it is confidential between Mr. Kelly and you, all right, let it be confidential, let it not be public.

382 By Mr. Bonnet: I thank you.

By Mr. Kelly (to Mr. Bonnet): I shall have but two words to ask Mr. Claverie, Junior, who is outside. Will you allow me?

By Mr. Bonnet: Certainly.

By Mr. Kelly: Mr. Dondey, you can stay.

By Mr. Dondey (witness): There is no opposition to that?

By Mr. Kelly: No.

Renewal of examination of Mr. A. Dondey by Mr. E. Kelly, representing the defendants:

383 By Mr. Kelly: I have one question only to put to Mr. Dondey. I want him to swear that this parcel—Mr. Dondey, one question more:

RRRDQ1. Do you swear that this parcel is as it arrived in your hands?

A. Yes, sir, I swear it. It is as I received it; I have not even undone it.

RRRDQ2. The contents are the same as arrived in your hands?

A. That is to say, it is perhaps a little broken in my pocket.

384

Second re-cross interrogatories by Mr. Bonnet representing the plaintiffs:

RRRXQ1. You swore just now that you have not even opened this parcel?

A. No, sir.

RRRDQ2. When the parcel was handed to the Commissioner it was damaged at both ends. You have not made any complaint to the postoffice?

A. In the first place, when it was brought to my house I was not there.

RRRXQ3. Was no complaint made? 385

A. I do not think so, I was not at home.

RRRXQ4. The parcel was sent you from your home to Paris?

A. I took it from home. I arrived from Grenoble, from a sitting of the Tribunal of Commerce. I went to Grenoble, at least, I have had the time to get it and I came back with it.

RRRXQ5. And you have not had the curiosity to see what there was inside?

A. I had time to see that here.

RRRXQ6. You saw it here?

A. I suppose so; it was seen yesterday. 386

RRRXQ7. Before being examined did you see the parcel?

A. The parcel, but not the plant.

RRRXQ8. Did you open it?

A. I had fastened the strings, I had a glance through the ends. It has its addresses, please notice that I have taken nothing off.

ANTOINE DONDEY.

Session of Thursday, March 22d, 1906, at 2 p. m. 387
Present: Parties as before.

Examination of JULIEN BELLE.

JULIEN BELLE, of Vourey, France, temporarily sojourning in Paris, France, aged thirty-five years and upwards, agriculturist, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-Interrogatories by Mr. Kelly:

Q1. What is your name?

A. Julien Belle.

962

388 Q2. What is your age?

A. Thirty-five years.

Q3. Where do you live?

A. At Vourey.

Q4. What is your trade?

A. Agriculturist.

Q5. Do you know a region called Chougnes?

A. Yes, sir, I work there even.

Q6. Do you know what plants the Carthusian Fathers cultivated at Chougnes?

A. Yes, sir.

Q7. What were they?

A. Those plants are balm—balm, angelica,
389 thyme, rue—rue, sage, hyssop. Now, there are the wild plants, well—

Q8. There were wild plants?

A. Which are marjoram and a little hypericum.

Q9. Do you remember any other plants that the Carthusian Fathers cultivated or that they had gathered on the mountains?

A. No, sir.

Q10. The two plants that you last named, were they cultivated or wild?

A. Wild.

Q11. Have you ever heard of a plant which is
390 called "vulneraire?" (vulnerary)?

A. I have heard of it, but not at Chougnes.

Q12. Have you never seen it at Chougnes?

A. No, sir.

Q13. Do you know where that is gathered?

A. I have heard it said that it is gathered in the Group of the Chartreuse.

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiffs:

XQ1. You said just now that you worked at Chougnes?

A. Yes, sir.

XQ2. Since when have you worked at Chougnes? 391
A. For 17 or 18 years.
XQ3. 17 or 18 years ago?
A. Yes.
XQ4. What did you do at Chougnes?
A. I was engaged in the gardens, principally.
XQ5. In the gardens?
A. Yes.
XQ6. In what gardens?
A. In the gardens of the owners.
XQ7. In the kitchen gardens?
A. Yes, but in spite of that I attended to the plantation of plants.
XQ8. You were occupied in the planting of 392 plants?
A. Yes.
XQ9. You told us just now that the only wild plants that the Carthusian Fathers gathered were marjoram and hypericum?
A. Yes.
XQ10. How do you know they gathered no others?
A. I have never seen any others, sir.
XQ11. Did you follow the monks when they went out gathering.
A. No, sir. In the first place, it was not even 393 the monks who did the gathering, it was women.
XQ12. Did you follow the persons that did the gathering?
A. No, sir.
XQ13. How do you know that the vulnerary was only gathered in the group of the Grande Chartreuse?
A. I knew it from the workmen that worked up there at Chougnes.
XQ14. You knew it from the workmen?
A. Yes, sir.
XQ15. You had no other means of information?
A. No.

JULIEN BELLE.

394 Session of Thursday, March 22nd, 1906—Continued.

Examination of JEAN PIERRE FEGE.

JEAN PIERRE FEGE, of St. Pierre de Chartreuse, France, temporarily sojourning in Paris, France, Corporal in the Administration of Waters and Forests, aged fifty-four years, having been produced, sworn and examined on the part of defendants, doth depose and say as follows:

Direct-interrogatories by Mr. Kelly:

395

Q1. What is your name?

A. Jean Pierre Fège.

Q2. What is your age?

A. Fifty-four years.

Q3. Where do you live?

A. At Saint Pierre de Chartreuse.

Q4. What is your calling?

A. Corporal (Brigadier) of Waters and Forests.

Q5. What are your duties as Corporal?

A. It is to superintend the doings of the keepers and to help them when anything happens to them
396 in their duties that they do not know how to get out of. They come to me and say: "Corporal, I "have discovered such an offence; what ought to "be done," or "I have found an offender, I do not know if it is worth while to make a report," I say; I say if it is worth five sous it is worth the trouble, if it is worth nothing it is not worth the trouble.

Q6. Where are you stationed at present?

A. At Saint Pierre de Chartreuse, Foresters' House, of the Cote du Moulin.

By the Commissioner: Will you please repeat that?

Witness: At Saint Pierre de Chartreuse, Foresters' House, of the Cote du Moulin. 397

Q7. You live in the forest itself then?

A. Ah, I am surrounded by forests everywhere, except some open fields—which make some spaces.

Q8. Do you know a plant which is called vulnerary?

A. Yes, sir.

Q9. Could you give me a description of it?

A. It is a little stem, very slender, having very narrow leaves, rather oval, placed alternately. At the end of this stem, which resembles a thread, there is sometimes one, sometimes two, sometimes 398 three flowers, but the plant itself is never more than 15 or 16 centimetres in height, that is a good deal, and it grows in little tufts sometimes, according to its age or the localities.

Q10. What is the color of the flower?

A. It is yellow, a rather light yellow, very pretty.

Q11. What is it called in the region, what is the term employed?

A. In the region, the dialect name, it is called the "venerelle"; some even say vulnerary—it is a matter of speech. 399

Q12. Has it a perfumed flower or not?

A. Very much perfumed.

Q13. Where have you seen it grow?

A. Oh, I have seen it in all the demesnial forest, from an altitude of 7, 8, 900, sometimes more, simetimes less, up to 15 and even 1,600.

By the Commissioner: 1,600 what?

A. 1,600 metres altitude, but 1,600 is rare.

Q14. At what altitude does it grow the thickest?

A. Well, from 12 to 1,400.

400 Q15. Have you ever seen vulnerary elsewhere than in the domain of which you speak?

A. No, sir, I did not know it before I came to the Grande Chartreuse.

Q16. What were your previous posts?

A. I lived in the parish of Tournon.

Q17. In what Department is that?

A. It is in the Department of Isère.

Q18. In the same Department?

A. In the same Department.

Q19. As the Chartreuse?

A. As the Chartreuse.

Q20. About how many kilometres from the
401 Chartreuse?

A. Oh, 25—62, 80—about 90 kilometers.

Q21. What was the altitude of the region—of that region?

A. From 100 to 200 kilometres.

Q22. Have you ever seen vulnerary grow in that region?

A. I did not know it, but nobody in that region ever spoke to me of vulnerary. After having lived in the parish of Tournon I lived in the parish of Villars—Raymond, joining that, I never heard it spoken of there, either.

Q23. In what Department is Villars-Raymond?
402 A. Same Department, same Canton.

Q24. Have you ever heard that vulnerary grew elsewhere than in the group of the Grande Chartreuse?

A. I have never heard of it, the more so that when I was spoken to about it, it was only at Chartreuse.

Q25. Have you ever seen vulnerary grow outside the forest and the property of the State?

A. Pardon, sir, I have seen some plants in the communal forest of Saint Pierre de Chartreuse

and of the Rushelle, parish of St. Christophe, entre deux Guiers, Section of Ruchere. 403

Q26. When you say "some plants," how many?

A. It was not thick. They were not counted, but they were sufficiently numerous to be worth the trouble of picking.

Q.27. If vulnerary grows elsewhere than on the State domain, can you tell me about in what proportion?

A. Sir, I could not tell you exactly, but in the State forests there grows quite from 18 to 19 twentieths.

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiff: 404

XQ1. You said sir, just now, that before settling at Saint Pierre de Chartreuse you did not know the vulnerary?

A. No, sir.

XQ2. How can you declare today that vulnerary does not exist?

A. I do not declare it; I tell you I did not know it.

XQ3. Will you let me finish? How can you declare today that vulnerary does not exist in the regions adjoining the Grande Chartreuse which you mentioned a moment ago? 405

A. Sir, I repeat, I do not declare; I say; I did not know it and I had not heard of it.

XQ4. Do you know, sir, a work: "La Flore Colorée?"

A. No, sir.

XQ5. —by Correvon?

A. No, sir.

XQ6. That work is found in the Library of Naturel Sciences at Paris, 3 Rue Corneille, and I point out to you that on page 36 it is said: "the

406 countries of origin of vulnerary are the Western Alps, the Pyrenees, and the rocky places and pasture grounds of the Alpine region"?

A. That may well be, but I never knew it before and I had never heard of it.

XQ7. You are a forest keeper, sir?

A. Yes, sir.

XQ8. Have you received orders to prevent the picking of plants in the forest?

A. Yes, sir.

XQ9. Who gave you them?

A. We had instructions, even coming from the "Prefecture," and dating from 1895 or 1896,
407 to prevent the destruction of the Alpine flora.

XQ10. Was it said in the instructions which were given you that any person who picked flowers should be considered by you as an offender?

A. No, sir, we were told that any person who acted with an idea of making a profit should be reported, and that any person who acted as a tourist who wished to carry away a bouquet as a souvenir we ought to inform him that it was wrong, but we ought not to report him.

XQ11. You are an official?

A. Yes, sir.

408 Redirect-interrogatories by Mr. Kelly:

RDQ1. Do you know the plants which grow at the former posts you occupied before coming to the Chartreuse?

A. But I know a rare plant, much valued in the region, the genepi.

RDQ2. I asked you if you knew the plants generally?

A. Some, as they say commonly—some, like the mugwert, valerian, genepi.

By Mr. Kelly (to the Stenographer): Take down all that he says, as far as possible. 409

The witness: The violet.

RDQ3. Do you think that if the vulnerary grew in that district you would have known it?

A. Well—I never paid attention, I never said anything, I never paid any attention.

RDQ4. You replied to the question which was put to you by the Opponent that your instructions were to "verbaliser" (report) any person who picked flowers with the idea of making a profit? 410

A. Of making a profit.

RDQ5. What does that mean, exactly, "verbaliser?"

A. That is to say it is to make a written report, to be sent through the official channels and prosecuted by the Courts, against persons having picked flowers with the idea of making a profit.

RDQ. Then those people were to you offenders?

A. Ah, yes—ah, yes.

Re-cross-interrogatories by Mr. J. Bonnet:

RXQ1. It appears, sir, from what you have said, that from 1895-1896 you had instructions— 411

A. Yes, sir.

RXQ2. To prevent any person from going into the demesnial forests—

A. And Communal—

RXQ3. Demesnial and Communal, to seek in the group of the Grande Chartreuse—

A. Oh, all the Alps of the Isère—

RXQ4. —or the Alps which belong to the State.

A. Even Communal, and even private—and even Communal unregistered.

RXQ5. Even private?

412 A. Even Communal unregistered.

RXQ6. I repeat my question. You have had since 1895 instructions to prevent the gathering of plants in the domains of the State, in the domains of the Communes, when such gathering was made for an interested purpose, for the purpose of making a profit?

A. Yes, sir, 1895 or 1896, I do not well recollect.

RXQ7. 1895 or 1896. You are an official who obeys orders?

A. So far as possible, so far as I can.

RXQ8. You are an official of the State who
413 obeys to the letter the regulations so far as possible?

A. So far as we can, without, however, going to excess.

RXQ9. Well, to be logical, we must conclude that since 1895 or 1896 no plants were picked for commercial purposes in all the forests of the State and in all the forests of the *Communes* (parishes)?

A. That I have had, no.

RXQ10. They must have been gathered elsewhere, then?

A. But, sir, I inform you that I have met—I
414 cannot say the date, I do not remember, but the place, several times, two, three, four women on a road that was passable to a car laden with wood, with sacks on their shoulders, but empty. That was in the morning, they had nothing; but I did not catch them offending, I could not report them.

RXQ11. It may therefore be taken for granted that since 1895-1896, as a general rule, no picking of flowers or plants was done on the State domains and on the parish domains?

A. I received evidence some time ago from a keeper I can name, named Plèbin, the nearest of my neighbours as Forester, who told me some days

ago—I asked him if he had himself seen plants 415
gathered like that; he told me, no but a year, two or three years ago, perhaps four years, the first year that I was here—it is but four years that I have been in the region—I saw a Carthusian monk with whom I talked a few moments, he told me that he had workmen behind the property of the Alienard, picking "venerelle," but it was not on my beat, it was not in my ward, I did not go there.

RXQ12. It appears, then, from the act you mention, which is an occasional act—

The Witness: Ah—

By Mr. Bonnet: —That your instructions 416
firstly were formal to prevent the gathering since 1895 in the Communal domains and those of the State and that except for certain offenders these regulations were observed?

A. Oh, I believe so, I believe so.

RXQ13. Do you know, sir, for what vulnerary is used?

A. Ah, that I cannot say. I do not know. It is said in the region that it is used for making Chartreuse, but I have never seen that. 417

Re-re-direct-interrogatories by Mr. Kelly:

RRDQ1. When you say "foret domaniale" (demesnial forest) what do you mean by that expression?

A. We call demesnial forests the forests which belong to the State, parishes, and private forests those which belong to private owners, to private persons.

RRDQ2. Yes or no, is the estate of the Grande Chartreuse included in the demesnial forests?

418 A. Entirely, it is the estate of the Grande Chartreuse which is completely enclosed in the demesnial forest, and by small lots.

RRDQ3. Do you know if vulnerary grows on State, and communal forests, the forests which belong to the estate of the Grande Chartreuse?

A. On the estate of the Carthusians, I have seen some plants, I have seen some plants at Erpison and at the Alienard.

Re-re-cross interrogatories by Mr. Bonnet:

RRXQ1. You said, you have just said that the
419 estate of the Grande Chartreuse was enclosed in the demesnial forests?

A. In the demesnial forests, yes, sir.

RRXQ2. What is about the extent of the estate of the Grande Chartreuse?

A. That depends—what is called the estate—at the time—for us, foresters, we called the estate of the Carthusians the portion which was granted to them at the same time as the part which belonged to them privately. If we make a distinction between the one and the other that makes a great difference.

RRXQ3. Will you consider the two cases?
420

A. The portion granted by the State to the Carthusians, it was said, contained 200 hectares, and in which portion it is not necessary to speak of vulnerary. No plant; or if there is one or ten it is an exception. Now, they also have Charmine, the Alienard, Erpison,—three,—Cordes,—four the Essart du Rocher, five—private estates that they had bought of the hospital of Grenoble, and in the Alienard and Erpison I have seen a few plants of vulnerary.

RRXQ4. What is the area of this second part of the estate of the Carthusians acquired from the hospital, about, approximately?

A. That— 421

RRXQ5. Approximately?

A. Ah, I make a rough guess—eight and four, twelve—But allow me, if you please, before. In this part of the estate acquired by the Carthusians, it is only in the rocky part, rocky and a little woody, that I have seen vulnerary plants, and not every where.

RRXQ6. I am asking you at the present time, sir, what is the area of this land acquired by the Carthusians from the Hospital of Grenoble? Is it 50 hectares?

A. Eight—twelve—seventeen — twenty — there are twenty, perhaps nearly thirty—but—but—I 422 do not say for certain, I affirm nothing.

RRXQ7. How many do you say?

A. About thirty.

RRXQ8. About thirty hectares?

A. About.

RRXQ9. What is the approximate size of the domain of the State in the group of the Grande Chartreuse?

A. I told you a while ago, I think—200 hectares were spoken of.

RRXQ10. I think you are getting confused; I speak of the forest?

A. Ah, 6,000 hectares, from what I have been 423 told, if I remember well, that was told me by a former chief of the service of Foresters; I think 5,900, or 6,000.

RRXQ11. What is the extent of the group of the Grande Chartreuse, approximately?

A. Supposing there is the double, of Communal and private forests, that would make twelve—I am going, perhaps, a little far, however—however—

RRXQ12. A few days ago Mr. Dondey, whom you must know, who was heard here as a witness, declared to us that the area of the group of the Grande Chartreuse was about 46,000 hectares.

424 A. But, sir, it seems to me you said "massif boisè" (wooded massif).

RRXQ13. No, I am speaking of the group of the Grande Chartreuse.

A. Well, then, we have the hospital, which have perhaps as much, which would make twenty-four, then all the lower part which is cultivated, that could easily make 40 or 50,000 hectares.

RRXQ14. You told us just now, sir, that you had received instructions to watch the gathering of plants on the domain of the State—

A. And of the parishes—

RRXQ15. —and of the parishes. Well. Can
425 you use your authority over the private owners?

A. Simply for the preservation of the flora.

RRXQ16. But can you prevent anyone—

A. We do not draw up a report—

RRXQ17. Will you allow me? Let me put my question. Can you prevent anyone from gathering plants on private property, especially if the owner has given permission to do so?

A. I think that the offender, if I may call him so, ought to show me a written authority by the owner.

RRXQ18. Can the owner pick?

A. I do not think he has the right any more
426 than another, according to the rules—

RRXQ19. Then you have rather peculiar notions as to property in our country?

A. That—a little—

RRXQ20. When one is owner of a field, one cannot gather, then, what grows in that field?

A. Perhaps not all.

RRXQ21. Will you tell me by virtue of what instructions you say so?

A. The Forestry Code prevents an owner from destroying a woody property adjoining a forestry group.

RRXQ22. You have, as a matter of fact, cited a correct instance. The Forestry Code and the Forestry Regulations limit the freedom of certain owners so far as the destruction of trees is concerned. As you should evidently know your business, you will be kind enough to let me know what are the circulars by virtue of which you can prevent the gathering of plants on private property? 427

A. Simply by a prefectoral order which has been mentioned to us.

RRXQ23. Will you indicate to me which one?

A. It is necessary to go and find it, now.

RRXQ24. There exists, then, according to you, a "prefectoral order"— 428

A. Yes, sir.

RRXQ25. —which forbids private persons to gather plants on their estate?

A. It does not speak of private persons, it speaks of everybody, consequently private persons should be included in same.

RRXQ26. Will you indicate what is about the date of this "prefectoral order?"

A. I have told you, I repeat: From 1895 to 1896, I do not quite remember the year.

RRXQ27. This "prefectoral" order, consequently, prevents the gathering of plants in the domains of the State, in the domains of the parishes, in the domains of private persons? 429

A. It speaks of all, it makes no exception.

RRXQ28. You are quite sure this order exists?

A. Ah, sir, such were the instructions given me, I merely conform to them.

RRXQ29. And instructions have been given to you to prevent the private owner—

A. It was not stated whether it is the private owner or the passer-by; everyone who gathers with the idea of making a profit, I must report.

RRXQ30. Has a private person the right to cut the grass which grows in his field?

430 A. That is more than probable.

RRXQ31. But when he cuts the grass must he be careful to avoid cutting the flowers?

A. That?—The flower is at mature maturity when he cuts the hay, consequently the seed is not lost.

RRXQ32. He can, therefore, cut the flowers at the same time as the grass?

A. He is even forced to.

RRXQ33. Therefore, he can at that time gather the plants?

A. He no longer has the time; it is too late.

RRXQ34. Can he cut the grass before the time
431 of maturity?

A. Yes, sir.

RRXQ35. Can you prevent him from doing it?

A. No,sir.

RRXQ36. But how can you explain the nature of this circular of which you speak?

By Mr. Kelly: I think I ought to make an objection here. I have let my adversary interrogate a long time on this question of the gathering of plants without making any, but I must now observe to the adversary that it has no relation with the subject of
432 my interrogatory.

By Mr. Bonnet: It is the judges who will decide as to the interest of my question.

By Mr. Kelly: I make my objection, that is all.

RRXQ37. There is a contradiction, sir, in what you have said just now. You have said, in the first place, that the private person could not gather the flowers, with the object of making a profit, on his estate—

A. Ah, I do not trouble myself whether it is on his estate or on the estate of another.

RRXQ38. The moment you do not trouble your- 433
self—

A. I do not ask him.

RRXQ39. —whether it is his estate or in the estate of another, you are authorized to draw up a report in every case?

A. I think it is so.

RRXQ40. You say, "I think;" you are not sure, then?

A. Because the case has never come to my attention, and I have never had any new instructions to ask of my superiors.

RRXQ41. Therefore, when a private person 434
gathers flowers in his field you can "verbaliser" (draw up a report) under the same conditions as if he gathered the flowers in the domain of the State or the domain of the parish?

A. I may be allowed to make an observation. There are flowers and flowers. When it is a question of rare flowers it is not a question of flowers which are found in the open fields.

RRXQ42. Does the circular of which you have spoken specify the rare flowers?

A. Yes, sir, it is to preserve the Alpine flora; it even names a few.

RRXQ43. Does it name these flowers enuncia- 435
tively or limitedly?

A. It names a few of them; it says: Among others such and such—

RRXQ44. Then, according to you, this circular would prevent the owner of a field gathering all the flowers in his field?

A. No, sir, nothing but the rare flowers of those likely to disappear.

RRXQ45. Does it express what are these rare flowers?

A. It is for the Tribunals to decide. I am to draw up a report.

436 RRXQ46. So that today your memory cannot serve you and does not permit you to say if such and such plant is referred to in the circular in question?

A. I beg your pardon, I remember the plant called ladyslipper or cypripedium.

RRXQ47. That is a plant that is referred to in the circular?

A. Yes, sir.

RRXQ48. Is vulnerary referred to in the circular?

A. I do not remember, I do not think so, however.

437

Re-direct interrogatories by Mr. Kelly:

RDQ1. Do you know pretty nearly all the private property in the part of the forests of which you are the "brigadier" (corporal)?

A. The private properties? Oh, I know some of them.

RDQ2. Does the vulnerary grow on the private estates?

A. No, I have never seen any in the private estates, because they are generally below the Communal forests, and the demesnial forests are as a
438 rule above, not always, but generally.

RDQ3. Do your functions as Forester Corporal extend to the forests in the domain of the State or to private estates?

A. In the domain of the State and of the parishes, of all the arrondissement, for which I have been sworn.

RDQ4. You have not the private estates under your control?

A. No, sir, unless an owner obtain authority from our Administration that one or two of his estates be watched by the Foresters.

JAN PIERRE FEGE.

Session of Thursday, March 22nd, 1906—Continued. 439

Examination of NOEL PERRET.

Noel Perret, of No. 52, Rue Thiers, Grenoble, France, temporarily adjourning in Paris, France, joiner, aged thirty-four years, having been produced, sworn and examined on the part of the defendants doth depose and say as follows:

Direct-interrogatories by Mr. Kelly:

Q1. What is your name?

A. Perret, Noel. 440

Q2. What is your age?

A. I am thirty-four.

Q3. Where do you live.

A. I live at Grenoble, Rue Thiers, No. 52.

Q4. What is your occupation?

A. Joiner.

Q5. Have you done anything else than joinery?

A. I have made boxes for the Carthusians, from 12 years to 15 years I worked at Mr. Vautier's at Saint Laurent du Pont, who attended to making boxes for the Carthusians; after I learned my trade.

Q6. Have you ever gathered plants for the Car- 441
thusians?

A. Yes, from 10 to 15 years old, when I was with Mr. Vautier, from the 15th July up to the end of August we went in the domain of the State to gather "venerelle" which we took to the Carthusians at Fourvoirie.

Q7. Where did you go to gather the vulnerary?

A. On the Grançon, at Eparres, as it was called.

Q8. Is it in the forest of the State which was let to the Carthusians?

A. I beg your pardon, no, that belonged to the domain of the State.

442 Q9. Have you seen vulnerary grow elsewhere than in the domain, in the forests of the domain?

A. In the neighborhood that I know, up above, no, I do not know places where we went other than in the domain of the State—in the Communal places—private estates, but there are no private estates in the neighborhood, up above, it is all the domain of the State, or Communal.

Q10. Do you know at about altitude vulnerary grows?

A. Oh, it grows high, always in high places, like at the Eparres, it is very high, Grançon, Granvaje—we went to the Collet, at Pertuis, they are all
443 heights.

Q11. Have you ever heard that vulnerary grew elsewhere than in the group of the Grande Chartreuse?

A. No, I have never heard that. I was with my parents at the house, my father never spoke to me of other places than the Chartreuse.

Q12. Did your father do gathering before you?

A. Yes, when I was nine years and a half he took me, but not far—it is necessary to walk four hours. He took me to the nearest—Then the stronger I grew the farther he took me.

444 Cross-interrogatories by Mr. J. Bonnet, representing the plaintiff:

XQ1. Where did you live when you went to do the gathering?

A. At Saint Laurent du Pont, hamlet of the M—

XQ2. At what distance from your home was the part of the forest where you went to gather vulnerary situated?

A. I would say we always walked on an average about four hours; that makes about—it is up-hill, it is necessary to count about 15 kilometres to the place where I lived.

XQ3. You have stated just now that in your opinion vulnerary did not grow elsewhere than in the group of the Grande Chartreuse? 445

A. Yes, when it grows principally on a certain height where there is a little herbage, there are places where it is thick, it does not come up.

XQ4. Do you know whether vulnerary does not grow in other groups than that of the Grande Chartreuse?

A. I do not know—I have only heard of these latitudes. I know that in some places there is not any.

XQ5. Do you know if in the Savoie? 446

A. I have not heard of it.

XQ6. Have you been there?

A. Yes.

XQ7. Have you looked for it?

A. No, not to look for it, I went for work, I did not go for those things.

XQ8. Do you know whether there is vulnerary in the Haute Savoie?

A. No, I have never heard of it. I was a soldier at Chambery, with two from Tournon-les-Bains, I have never heard that there was any vulnerary in those latitudes.

XQ9. Do you know the part of the mountain which stretches from Chambery to Saint Gervais, passing by Albertville? 447

A. I do not know it, no.

XQ10. Do you know whether in these regions, in the forests, any vulnerary is found?

A. I have been into those latitudes, but they are very thick forests, many fir trees, forests for exploitation. I do not think so.

XQ11. Have you looked for it?

A. No, I may say that I have never been, but I have passed there several times, for a long time,

448 to go to work at Albertville. I have been further, to Tour. I have never heard of it.

XQ12. Have you looked for it?

A. No, I may say that I have never looked for it, my father never took me to those places.

N. PERRET.

Session of Thursday, March 28th, 1906—Continued:

449 Examination of JOSEPH NICOLAS GEORGES.

JOSEPH NICOLAS GEORGES, of Fourvoirie, Saint Laurent du Pont, France, temporarily sojourning in Paris, France, Corporal Forester, aged fifty years, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

Direct-interrogatories by Mr. Kelly:

Q1. What is your name?

A. Georges, Joseph Nicolas.

450 Q2. What is your age?

A. I am fifty; I was born in 1856.

Q3. Where do you live?

A. At Fourvoirie, Saint Laurent du Pont, Hamlet of Fourvoirie.

Q4. What is your calling?

A. "Brigadier" (corporal) Forester.

Q5. What are your duties as Corporal Forester.

A. I have simply to command the keepers which I have in my brigade, I have seven who are under my supervision, and moreover I must also make a tour of their beats to see that they attend to their duty.

Q6. What is the duty of the keepers? 451

A. It is to survey the felling of trees, look for delinquencies, if any are committed, to cut wood, no matter what offence, all products belonging to the soil of the forest.

Q7. Were you formerly a Forester, a Forester keeper?

A. Yes, sir, I was a Forester keeper in Savoie, Canton of Saint Jean de Maurienne, at Jariez. I remained there six years and nine months. I was Communal keeper, I only watched over the Communal forests, belonging to the parishes. From there I was nominated in 1889, on the 17th June, 452
to Maribel des Echellas, Isere—communal and demesnial forests, and in 1891, on April 15th, I took the post of the "desert" on Saint Laurent du Pont, comprising Erpison, etc., in the brigade of Faige, and in 1897 I was nominated chief of the Brigade at Fourvoirie, on the 24th of the month of April.

Q8. When you say "desert" what do you mean by "Desert"?

A. It is a Forestry House, the place is called the "desert" it is property which belongs to the State.

Q9. Has the "desert" another name, or is it the Desert? 453

A. They say: "The Desert," the Forestry House of the "desert" just as they say the entrance of the Desert, to enter the forest of the Grande Chartreuse.

Q10. Do you know a plant which is called the vulnerary?

A. Yes, sir, I knew it on arriving in the Isère; in the Savoie I have never heard of it.

Q11. What is the name in the region, what name do they give to vulnerary in the region?

A. The "venerelle" they call that venerelle, that is the name they give to it in the country dialect.

Q12. Where does the vulnerary grow?

454 A. It grows principally on the crest of the rocks which are woody, where there is little herb, it is in the seperation of the canton and the portions of the forest, everywhere where there is a selving ridge, rocks underneath, dry places, from an altitude of 700 to 800 up to 1,400, 1,500, 1,600 metres.

Q13. What is the altitude that the vulnerary prefers?

A. It is from 1,200 to 1,400, from 1,000 to 1,400 metres.

Q14. Have you ever seen the vulnerary grow elsewhere than in the group of the Grande Chartreuse?

455 A. No, sir. Ah, I have seen it there, on the border of the pastures of the hospital, which border on the State, simply on the crests, because in the pastures of the hospital there is none; simply on the borders, these are rocks.

Q15. Where does it grow by preference. In the forests of the Domain or in the private forests?

A. In the private forests I do not know of any.

Q16. How does this come about?

A. I do not know—because—it is probably that they are at a lower altitude, or that the ground does not suit them, but in the brigade which I have

456 there is none at all in the communal forests, not in the private forests and not even in the communal forests.

Q17. Can you give me a description of the vulnerary?

A. It is a small yellow plant, of which the leaf is indented, in length—it may go up to 15 centimetres in length. A yellow flower at the point, and which often falls a little.

Q16. Has it a smell?

A. Very much, sir, yes, a great deal, even when it is in flower, as soon as it is in flower if you do not see it you smell it; the flower having gone, if

you go into a place where there had been the flower, you can say: There has been some vulnerary in that place. 457

Q19. Have you ever heard that the vulnerary grew outside the group of the Grande Chartreuse?

A. No, sir.

Q20. You say that you occupied another post at Maurienne, Haute Savoie?

A. Yes, sir.

Q21. What was the altitude?

A. The altitude was from 800 to 2,000 metres.

Q22. Have you ever seen vulnerary at Maurienne, at this post? 458

A. No, sir.

Q23. Have you ever seen it at Miribel?

A. No, sir. There are some forests of underwood sometimes, it is still in the forests of the Grande Chartreuse, but it is exposed to the south and not high; the highest is 500, 580 metres.

Q24. When you say demesnial forest, do you understand or not what is called the estate of the Grande Chartreuse?

A. The demesnial forests of the State is understood.

Q25. Does that comprise the estate of the Grande Chartreuse? 459

A. That does not comprise the estate of the Carthusians.

Q26. Of the Carthusians?

A. The forest of the State comprises all that which is demesnial forest.

Q27. Have the Carthusians leased a part of the forests of the State, do you know?

A. They had some fields, yes, with some little wood there in same.

Q28. You are not sure?

A. I was not—in the Brigade at—there is not any. In my Brigade there is not any. I have 2,-

460 300 hectares of forest in my Brigade, the remainder—I was, as guard, for six years in the Brigade of Faige, which I have gone over, but I do not know it as well as my brigade.

Q29. You have said that you have seen vulnerary growing on private property?

A. No, sir.

Q30. Not at all?

A. I have not seen any at all in my brigade.

Q31. Have you seen vulnerary growing beyond the forests of the State?

A. I said that there was a border, a little bit which was above the hospital of Grenoble, on the
461 crest of the rock.

Q32. Is that the only place, except the State Forests, where you have seen it grow?

A. That is the only place that I know of.

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiff:

XQ1. Of what your duties consist, sir?

A. It seems to me that I said it just now; it is to look after the Foresters, go a few rounds, see that they do their duty.

462 XQ2. In what part, on what domain?

A. On the State domain and on the Communal Forests.

XQ3. Do you exercise any action on the forests of private persons?

A. No, sir.

XQ4. You cannot draw up any complaints ("procès-verbaux") about the domains of private persons?

A. No, sir. For that it would be necessary to be sworn, to have a commission from the Prefecture to be able to "verbaliser" (report) on private property. We cannot report nor cause to be reported on private properties.

XQ5. Is there no circular which gives you authority to report about the domain of private persons? 463

A. No, sir. There was an order, as far as I remember, it was, I think, the year I became head of the brigade—a Perfectorial order forbidding Alpine plants to be picked in the forests of the Grande Chartreuse; but that order was posted up, they gave us a few copies. It mentioned some plants that perhaps I could not remember very well.

XQ6. About what time?

A. I tell you, sir, I believe I was already head of the brigade. I entered in 1897, the 24th of the month of April. I began my service the 16th of May. 464

XQ7. You say that this Prefectorial order concerned the forests of the Grande Chartreuse?

A. The forests of the Grande Chartreuse.

XQ8. Belonging to whom?

A. To the State and to the parishes.

XQ9. But not to private persons?

A. Oh, no, sir.

XQ10. You told us just now, sir, that you had been keeper at Saint Jean de Maurienne?

A. Yes, sir.

XQ11. Did you at that time know vulnerary? 465

A. No, sir.

XQ12. What? Then how is it that you answered just now to the opposing side that when you were keeper at Saint Jean de Maurienne you have never found vulnerary—you had never heard of it?

A. I have never heard of it, I said so and I repeat it.

XQ13. But you did not know it, you could not distinguish it?

A. Oh, certainly not.

XQ14. You declared just now to the opposing

466 side that vulnerary did not grow in the communal forests?

A. No, sir.

XQ15. There was none at all there?

A. In my brigade, I certify that.

XQ16. Good. I wish to inform you, and if my assertion should be contested I would ask that the corresponding passage should be read, that the Brigadier who preceded you just now, and who is named Faige, declared to us that vulnerary grew in the communal forests?

A. Perhaps in his district; I know nothing about it.

467 XQ17. But he told us that in those forests it did not grow "thick" (*"dru"*). That is his expression.

A. Yes, sir, and also, in his brigade, for I was keeper in his brigade, there is but the forest of "Saint-Christophe entre deux *Guiers*"—there is la Ruchelle, there might be some little at la Ruchelle, there might be some little at la Ruchelle, but the others I do not know.

XQ18. In any case, I make known to you the meaning of his declaration, for I have the exact words before me. Do you know why the Carthusians wanted vulnerary?

468 A. Upon my word, no, not at all.

XQ19. Do you know for what purpose they intended it?

A. How should I know? I suppose that they used it—was it for remedies, to make Chartreuse? I know nothing about it, I can but guess, I know nothing. I know that they had it picked, because when I came to the post of the Desert in 1891, April 15th, I heard it said that women were sent to pick it, that they sold it to the Carthusians. That is what I heard, but I have never seen them pick it.

XQ20. But you do not know for what this vulnerary was intended?

A. No, sir.

Redirect-interrogatories by Mr. Kelly: 469

RDQ1. Do you know where these women went to pick vulnerary?

A. Oh, they certainly went into the State domain.

RDQ2. You cannot state exactly?

A. I know that they went in the direction of Pertui, they went up to Erpison, and moreover they went in the direction of Cresson, Montfernay, nearly all the demesnial forest.

RDQ3. Is not Erpison a part of what is called the estate of the Grande Chartreuse?

A. I beg your pardon: Erpison, there is a part 470
which belongs to the Carthusians, but there is also some which belongs to the State. The Alienard, there is a part which belongs—enclosures which belonged to the Carthusian Fathers. For I have been through those places.

RDQ4. When you were in your former post at Maurienne, did you know some of the plants which grew in that district?

A. I knew of genepi, tea, the plants that I was shown, which I learned to recognize when I was there; I have even picked genepi many times.

RDQ5. Do you think you would have remarked 471
vulnerary if you had seen it there?

A. It seems so to me, for when it had been showed to me, when I came to the Chartreuse, I should have recognized it, but I did not see it, I do not remember to have seen it at Maurienne.

Recross-interrogatories by Mr. Bonnet, representing the plaintiffs:

RXQ1. You told me just now that you were appointed keeper, Brigadier, about 1896, 1897?

A. Yes, April 24th, 1897.

472 RXQ2. Was it from 1896 to 1902-1903, that the women who went to look for plants for the Carthusians went to gather them in the State domain?

A. I believe that they did not go after that order as they did before it, it is certain that it was made known to them. I once saw two young men, who were above Currières, as soon as they saw me they took to their heels, I could not catch them. They were two young men, not women.

RXQ3. Then, as a general rule, since 1896, the plants which were taken to the Carthusians were not gathered in the domain of the State? You had instructions in consequence?

473 A. There was that order that I told you of, which was transmitted to the keepers, and they were requested to look out.

RXQ4. And you observed that order?

A. Yes, sir, but we could not always be in the forest, it is certain that some must have been picked.

RXQ5. In any case you kept watch so that the order should be carried out?

A. Yes, sir; the best we could. When we were called sometimes on special duty, and we remained away a fortnight or eight days, when the people
474 knew that we were gone—especially at those times, in July, August, that is the time when they pick the vulnerary—at that time we could not keep a look out because we were occupied otherwise.

RXQ6. This Prefectorial order, of which you spoke, authorized you to report, to draw up complaints, against any offender, both in the State domain and also in the Communal Forests?

A. Of course—only, they were Alpine plants, what are called Alpine plants. It was professors of natural history who complained, that is why there came a Prefectorial order to prevent Alpine plants being picked in the State forests.

Depositions of witnesses produced, sworn and examined the twenty-ninth and thirty-first days of March, and the 2nd day of May, in the year one thousand nine hundred and six, at the office of the Consulate General of the United States of America at London, England, situate at St. Helen's Place, Bishopsgate Street, in the City of London, England, aforesaid, under and by virtue of a stipulation issued out of the Circuit Court of the United States, for the Southern District of New York, in a certain cause therein pending and at issue between BAGLIN, Complainant, and CUSENIER COMPANY, defendant, as follows: 475

William Cocks, a stenographer and distinterested person (a member of the Institute of Shorthand Writers practising in the Supreme Court of Judicature in England) is appointed by the Commissioner to take down the deposition in shorthand, he being first duly sworn to take correct notes of the depositions in shorthand, and make a faithful transcript thereon into typewriting. 476

It is hereby stipulated between counsel for plaintiff and counsel for defendant that the depositions should be taken by Mr. Francis Frigout, Deputy Consul General of the United States of America, at London, England, notwithstanding that the stipulation does not specifically name "Deputy Consul" or "Deputy Consul General." 477

JOHN CAMERON GRAHAM, Esq., Barrister at Law of the Bar of England, of 2 Garden Court, Temple, London, instructed by Messrs. Hollams Sons, Coward & Hawksley, of 30 Mincing Lane, London, Solicitors of the Supreme Court of Judicature in England, appeared as counsel on behalf of the plaintiff.

MR. EDMUND KELLY, of 82 Boulevard Haussmann, Paris, counsellor at law of the United

478 States Bar, appeared as counsel for the defendant.

Mr. Graham: May I ask you, sir, to allow me to say that Mr. Bachrich, a stenographer from Paris, desires me to ask you to allow him to be present to take a shorthand note of the proceedings, as he has come over here expressly for the purpose.

The Commissioner: If he takes a note without any talking or translation, I do not mind, but it must be clearly understood that it is absolutely unofficial, and that Mr.
479 Cocks is taking the official note.

Mr. Graham: Oh, quite so.

MR. JOHN MUMFORD, being duly and publicly sworn, is examined, and doth depose and say as follows:

Q1. By the Commissioner: What is your full name?

A. John Mumford.

Q2. What is your age?

480 A. 52 years and upwards.

Q3. What is your occupation?

A. I am a commercial traveller now.

Q4. And your address?

A. My private address, do you mean?

Q5. Give me both your business and your private address.

A. My business address is 6 and 7 St. Mary-at-Hill, in the City of London, England.

Q6. What are you?

A. I am in the employ of Messrs. George Idle, Chapman & Company, Limited, Wine Merchants, and my private address is 13 Ackerman Road, Brixton, London.

Examined by Mr. Kelly on behalf of the defendant. 481

Q7. How long have you been with Messrs. Idle, Chapman & Co.?

A. Since the commencement of July last.

Q8. What was your occupation before entering into the employment of Messrs. Idle, Chapman?

A. Wine and spirit merchant.

Q9. Were you transacting business on your own account or with other parties?

A. On my own account since the death of my late partner, Mr. Doyle. 482

Q10. What was Mr. Doyle's business?

A. He was the sole agent for the liqueur of the Grande Chartreuse for nearly 30 years up to the time of his death in 1901.

Q11. What was your relation to Mr. Doyle?

A. At the time he died I was his partner.

Q12. How long were you with Mr. Doyle?

A. From the 1st of May, 1882, to the time of his death.

Q13. What did you say was Mr. Doyle's business?

A. He was agent for the Grande Chartreuse liqueurs solely—nothing else. 483

Q14. Did you become familiar with Chartreuse in that business occupation?

A. Yes.

Q15. To what do you attribute the special properties of the Chartreuse liqueur?

A. Well, I have always been given to understand that the special properties were derived from the herbs and the peculiarity of the herbs growing on the soil of the Grande Chartreuse—the special properties derived from the soil around the Grande Chartreuse.

Q16. Have you ever heard that disputed?

484 A. Never.

Q17. How many Chartreuse liqueurs or liqueurs purporting to be Grande Chartreuse are there now on the market?

A. There is only the one, the liqueur manufactured by the monks in Spain, but that is not called Chartreuse; that is called the liqueur of the pères Chartreux.

Q18. By whom is Chartreuse now manufactured?

A. By the French Government, at Fourvoirie, in France.

Q19. Is there any of the old liqueur manufactured by the Chartreuse monks at the Monastery
485 now on the market?

A. The liqueur manufactured by the monks previously to their expulsion from France?

Q20. Previous to their eviction from France?

A. Ah, yes, there is some on the market. There is not a great deal.

Q21. Have you tasted these three liqueurs?

A. Yes.

Q22. What is your opinion regarding their qualities respectively?

A. Well, my opinion is that that which is now being manufactured by the French Government is
486 equal in every respect to that which was manufactured by the monks up to their eviction from France. Of course, that which was manufactured before their eviction is mellower owing to the age in bottle, but other than that, I consider the one is equal to the other.

Q23. What is your opinion of the liqueur manufactured by the pères Chartreux at Tarragona?

A. That it is not up to the quality of the old manufacture.

Q24. Are you now engaged in selling Chartreuse?

A. Yes.

Q25. Have you had any interview or conversation with H. C. Amendt, the manager of the hotels and Refreshment Rooms Department of the Great Eastern Railway within this month? 487

A. Yes.

Q26. State the whole interview.

Counsel for plaintiff objects to the question on the ground that it is mere hearsay and no evidence.

A. I saw Mr. Amendt by appointment and introduced the subject of the Chartreuse liqueur to him, and he said: "No, it is no use; I don't consider the liqueur at all up to the mark." I said: Have you tasted it, Mr. Amendt? He said: "I have tasted it, otherwise I could not say it was not so good." I then pulled out of my pocket a bottle of the liqueur manufactured by the French Government, and when he saw the label he turned to me and said: "Are you not representing Messrs. Rivère?" I said: "Certainly not. I do not wonder that you consider the liqueur is not so good as that which is made at Tarragona." 488

Q27. What was the result of this interview with Mr. Amendt? 489

A. He then asked me to leave samples with him, and to call again in a day or two.

Q28. Did you do this?

A. Yes.

Q29. What took place at your second interview with Mr. Amendt?

A. At the second interview Mr. Amendt then had some of the old manufacture of Chartreuse made before the expulsion of the monks, he had the samples which I had left with him that we had manufactured, and he also had samples that were made by the pères Chartreux in Tarragona, and he

496 A. I go to any one who is likely to be a purchaser of Chartreuse.

Q43. When Mr. Amendt made these tests, did he know which bottles he was testing each time?

A. Certainly.

XQ44. Did it occur to you that it would have been a much better test if you had not told him which bottles they were?

A. I did not dictate to him in which way he should test them.

XQ45. Does it not occur to you now that it would have been a much better test if you had not told him which bottles he was testing? I am ask-
497 ing for your present opinion on that question; would it not have been a much better test if he had not known which bottles he was testing?

A. Probably.

XQ46. Do you say certainly?

A. No, I will not say certainly—no.

XQ47. All right; I will not screw it up too far. You say that you attribute the special merit of Mr. Lecouturier's liqueur to the herbs?

A. I do not say that I attribute it to them; I do not say that it is the opinion I express.

XQ48. You form no opinion about it?

A. No.

498 XQ49. You said some of the original liqueur made by the monks was still on the market?

A. Yes.

XQ50. Are you prepared to say that there is not still a very large quantity left on the market?

A. I do not know. I have no idea as to the quantity. I should think there is some. I should say there is not much actually.

XQ51. Did you say that you had already gone to several of your old customers to sell Chartreuse to them?

A. Yes, I called on some of our old customers.

XQ52. Did you secure orders from your old customers? 499

A. Yes, I have done so.

XQ53. Do you know or not whether Mr. Amendt was an old customer of Idle, Chapman & Co.?

A. I believe so.

XQ54. From whom did you get the impression that Chartreuse owed its properties to the plants that grew at Grande Chartreuse?

A. From Mr. Doyle, and if my memory serves me well I believe it has been expressed again and again in actions at law which have been taken by the Fathers against manufacturers of spurious liqueurs. 500

XQ55. How long do you say Mr. Doyle had been agent of the Chartreuse?

A. Nearly 30 years.

BASIL LYTE WILLIS, being duly and publicly sworn, is examined, and doth depose and say as follows:

By the Commissoner:

501

Q1. What is your full name?

A. Basil Lyte Willis.

Q2. What are you?

A. A wine and spirit merchant and valuer of 5 St. Mary-at-Hill, in the city of London, and 46 Charing Cross Mansions, London.

Q3. What is your age, about?

A. 38.

Examined by Mr. Kelly on behalf of the defendant:

Q4. How long have you been in your present employment?

502 A. About 22 years.

Q5. Have you ever been in the distillery business yourself?

A. Yes, I have been a practical partner in a distillery for nearly 10 years.

Q6. What distillery?

A. Campbell's Distillery, Addington Square, London.

Q7. Have you ever been to the United States?

A. Yes.

Q8. On what occasion?

A. In June, 1904, as distillery expert for the purpose of planning and erecting a distillery in Balti-
503 more, a gin and liqueur distillery.

Q9. For what firm?

A. The Wilson Distillery Co., incorporated in Baltimore.

Q10. Did you ever have occasion to go to Turin on behalf of the Wilson Company?

A. Yes, in October, 1904.

Q11. Did you on that occasion visit the convent of the Grande Chartreuse?

A. On my way to Turin I stopped at, I forget the name of the place, but I visited the Grande Chartreuse on my way.

Q12. Who accompanied you on that occasion?

504 A. Mr. W. H. Garrett.

Q13. What was the object of your visit?

A. Curiosity and holiday.

Q14. Did you visit the factory or the distillery of Fourvoirie?

A. Yes.

Q15. What did you see there?

A. I saw the process except the ingredient room or the soaking room.

Q16. Did you taste the Chartreuse on that occasion?

A. Yes, I tasted the first lot that was ready.

Q17. Did you come to any conclusion on the subject at that time? 505

A. I found it very good.

Q18. Did you or not think it resembled the Chartreuse manufactured by the monks?

A. Yes, I found it equal if not superior to recent distillations of the monks?

Q19. Why do you say recent?

A. My impression being that they had lately deteriorated the quality.

Q20. Have you tasted it recently?

A. Yes.

Q21. What was the result of your last tastings?

A. My present impression is that the liquidator's liqueur is equal to that previously made by the monks. 506

Q22. Have you tasted the liqueur manufactured at Tarragona?

A. Yes.

Q23. What is your opinion regarding the liqueur manufactured at Tarragona?

A. My opinion is that it is not so good as that previously manufactured by the monks at Fourvoirie.

Cross-examined by Mr. Graham on behalf of the plaintiff: 507

XQ24. Do you sell these liqueurs in the course of your business?

A. Yes.

XQ25. Do you sell Mr. Lecouturier's liqueur?

A. Yes.

XQ26. Do you sell any of the monks' liqueur?

A. Yes, I have sold some. I sell anything that is asked for.

XQ27. I was not asking you that. I was asking you the last date when you sold any of the monks' liqueur?

508 A. I cannot tell you without referring.

XQ28. Two or three years ago?

A. No, it has not been on the market.

XQ29. I am talking of the monks' liqueur?

A. Oh, the monks' liqueur?

XQ30. Yes; when did you give up selling that—the original monks' liqueur—the monks' liqueur as made at Fourvoirie?

A. I do not know whether I sold any recently or not. They are still to be had at a very enhanced price.

XQ31. Have you sold any of the stuff made by the monks at Tarragona?

509 A. No.

XQ32. Have you sold any of Mr. Lecouturier's?

A. Yes.

XQ33. Large quantities?

A. No; not large quantities. Mine is a very small business.

XQ34. Oh, you are in a very small way of business. You are principally an expert?

A. Yes, I have business as well.

XQ35. An expert in what?

A. Distillation and valuer, wine and spirit valuer.

510 XQ36. Supposing a gentleman came to you and said he had got some Chartreuse to sell, would you understand what he meant?

A. Chartreuse I should take to be either the liquidator's or the previous make of the monks at Fourvoirie—Chartreuse from the monastery.

XQ37. What would you have thought it meant before the expulsion of the monks?

A. What would I have thought what meant?

XQ38. The word Chartreuse?

A. Well, there was only one Chartreuse. There is only one Chartreuse.

XQ39. I am asking you if a man came to you and

said: "I want to sell you Chartreuse" before the monks were expelled? 511

(Defendant's counsel objects to the words "expulsion" and "expelled".)

Mr. Graham: I will take your word; what is it?

Mr. Kelly: Eviction.

XQ40. If they had come to you before the eviction of the monks and said they had got some Chartreuse for sale, what should you have understood them as referring to?

A. Chartreuse liqueur, Grande Chartreuse. 512

XQ41. That would have been Chartreuse made by the monks?

A. Yes.

XQ42. The monks are still making Chartreuse?

A. No.

XQ43. Why not?

A. They are making elixir des Pères Chartreux.

XQ44. Is that the same thing as the liqueur—the elixir?

A. No, elixir is spoken of as a rule as an unsweetened spirit.

XQ45. They are totally different things, are not they? 513

A. Elixir and liqueur.

XQ46. Yes.

A. The elixir of Grande Chartreuse is a very strong unsweetened spirit, the elixir of the pères Chartreux is a sweetened spirit.

XQ47. Did you ever hear the term "Chartreuse" applied to elixirs?

A. There is elixir of the Grande Chartreuse which is a very strong unsweetened spirit sold in a small bottle.

XQ48. I will just ask you one more question;

514 you say that if a person came to you now and offered you Chartreuse for sale you would understand it to be Lecouturier's Chartreuse?

A. Yes.

XQ49. Why would you think that?

A. Because it is labelled as Chartreuse, and known in the trade as Chartreuse.

XQ50. I am not talking about labels. I am saying if a man says to you or writes to you a letter saying I have some Chartreuse for sale, you say that you would understand him to refer to Lecouturier's Chartreuse?

A. The Liquidator's Chartreuse is labelled Char-
515 treuse.

XQ51. Will you pay attention to my question; if a man writes to you to say he has for sale some Chartreuse, now, do you say you would understand him to be referring to Lecouturier's Chartreuse?

A. I should unless he specified that it was a liqueur previously made at Fourvoirie.

Q52. That is, I suppose because you know that Lecouturier is carrying on business there.

A. I know it is in the hands of a liquidator.

XQ53. That is why you would say that the words referred to his brand?

516 A. His liquor is labelled.

XQ54. Never mind his label; you say you would understand the person who wrote that letter to be referring to Lecouturier's Chartreuse—did you say that or not?

A. Unless he specified the liqueur of the Pères Chartreux.

XQ55. I quite agree with you about that. I am asking if he did not specify anything at all, so you need not bring in that. Now I ask you why would you say you would understand that as having reference to Lecouturier's Chartreuse?

A. Because Lecouturier's Chartreuse is known 517
in the trade as Chartreuse.

Mr. Graham: I do not ask you anything more.

Mr. Kelly: Nor do I. I have no other witness here at present and therefore I would ask the Commissioner to adjourn till half past two o'clock this afternoon.

Signed:
B. L. WILLIS.

518

GEORGE FRANK HERRING GRANT, being duly and publicly sworn, is examined, and doth depose and say as follows:

Q1. What is your full name?
A. George Frank Herring Grant.
Q2. Your age?
A. 51.
Q3. And occupation?
A. Wine merchant.
Q4. What is your address?
A. 24 Rood Lane, in the City of London, Eng- 519
land.
Q5. What is the name of your firm?
A. G. F. Grant & Company.
Q6. You are a partner in that firm?
A. I am the sole partner.

Examined by Mr. Kelly, on behalf of the defendant:

Q7. How long have you been in the wine trade?
A. 37 years.

520 Q7a. Does your business include the sale of liqueurs?

A. Yes.

Q8. Have you dealt in Chartreuse?

A. Yes.

Q9. How many years have you dealt in Chartreuse?

A. I cannot be certain, I should imagine 20.

Q10. How many Chartreuses are there in the market now?

A. I only keep one.

Q11. What kind is that.

A. Pères.

521 Q12. Will you give a fuller designation?

A. That which is shipped from Tarragona.

Q13. Have you ever dealt in the liqueur manufactured by Mr. Lecouturier or Mr. Cousenier?

A. That I am not certain of, I could not tell without my books.

Q14. Have you ever tasted the liqueur manufactured at Tarragona?

A. Yes.

Q15. Have you ever tasted the liqueur manufactured by Lecouturier.

A. Yes.

Q16. What is your opinion of these two liqueurs?

522 A. Well, I am not a drinker of Chartreuse, I never take it. One of them was brilliant and the other was not.

Q17. Which of the two was in your opinion brilliant?

A. That which was shipped from the monastery.

Q18. Does the liqueur which was shipped from the monastery resemble the liqueur manufactured by the monks at Chartreuse?

A. Do you refer to the inside of the bottle or the outside, or both?

Q19. I meant the inside of the bottle—the liquid?

A. Yes, I should say it did.

Q20. Can you give any reason why you do not deal in the liqueur manufactured by Mr. Lecouturier? 523

A. Because the agent here could not follow up his shipments. We had some shipments, whether that was the old or the new I am not quite certain, I cannot tax my memory as to that, but he could not follow them up, therefore we could not keep on with it.

Q21. Do you know why he could not follow them up?

A. He informed us there was a stoppage.

Mr. Graham: I have nothing to ask you. 524

G. F. H. GRANT.

Mr. Kelly: It is stipulated that the examination of Mr. Parker, a witness who is too unwell to attend today, shall be adjourned until such day as shall be agreed upon by Mr. Couldwell, solicitor for the defendant, and Mr. Coward, solicitor for the plaintiff, prior to the 15th April next.

525

ALFRED MOORE, being duly and publicly sworn, is examined, and doth depose and say as follows:

Q1. What is your full name?

A. Alfred Moore.

Q2. What is your age, about?

A. 53.

Q3. And your occupation?

A. A wine merchant.

Q4. Where do you carry on business?

A. 92 Great Tower street.

526 Q5. What is the name of your firm, if any?

A. James Watson & Company, Limited, distillers.

Examined by Mr. Kelly on behalf of the defendant:

Q6. How long have you been in your present business?

A. Since 1892. I entered the wine trade in 1878.

Q7. Have you been distilling since 1892.

A. I have been attached to a firm of distillers.

Q8. Do you know a liqueur called Chartreuse?

527 A. I do.

Q9. Do you know how many of them there are at present on the market.

A. Two I believe.

Q10. How do you designate them?

A. I understand one of them as being made in Spain, the other is being made at the monastery where it was always manufactured.

Q11. Have you ever tasted these two liqueurs?

A. Yes.

Q12. Can you tell me any occasion on which you tasted them?

528 A. January, 12 months I was at the offices of Messrs. Spiers & Pond on my own business, and I was asked to go into the sample room by one of the directors, Mr. Freshwater, and Mr. B. M. Parker, their taster. They said they had just had a tasting of two brands of Chartreuse—the yellow Chartreuse—and said it would be interesting if I would come and taste blindfold. This was done by means of the bottles being obscured behind a curtain. The glasses containing the liqueurs being in front of the curtain—there were three. I at once discarded one, from my point of view, showing crudeness. With regard to the other two, I

took some time to carefully taste them, and eventually I arrived at the conclusions that one was slightly "rounder" as we call it, than the other, therefore I was able to call them 1, 2 and 3. Mr. Parker then rolled up the curtain and it was found that I had selected as the best the yellow Chartreuse of the liquidator; as the second the old original stuff, and the third was that for which Mr. Rivière is acting. 529

Q13. The third you say is manufactured where?

A. Well, I always associated it with the name of Mr. Rivière, who is the London agent. It is now made in Spain, I understand. That was of course the end of the interview, I had no further interest in the matter and I left. 530

Q14. Is or is not the liquor manufactured by Mr. Lecouturier easily distinguishable from the liqueur manufactured by the monks at Chartreuse?

A. I came to that conclusion.

Q15. (By Mr. Graham): By tasting?

A. By tasting.

Q16. (By Mr. Kelly): That it was easily distinguishable?

A. That was my opinion.

Q17. Is the distinction between the two considerable? 531

A. I believe so by my having at once discarded the Spanish one.

Q18. What was the character of the distinction?

A. Well, I think it is best summed up in that word that I used originally "crude."

(It was suggested by Mr. Noad for Mr. Sebastian that the witness misunderstood a previous question, question No. 14, ending with the words "manufactured by the monks of Chartreuse.")

Q19. (By Mr. Kelly): What liqueur are you now alluding to?

532 A. The one that was crude—the Spanish manufacture.

Q20. What is your opinion regarding the liqueur manufactured by Mr. Lecouturier?

A. I do not know that name, who is that gentleman?

Q21. In your opinion is the liqueur being now manufactured at the monastery by the French Government at Chartreuse easily distinguishable from the liqueur manufactured by the Chartreuse monks before their eviction from France?

A. No, if you turn to my original answer you will find I made that clear. I had difficulty in de-
533 termining which was the better of Nos. 1 and 2 but no difficulty in differentiating between those and No. 3.

Cross-examination by Mr. Graham in behalf of plaintiff:

XQ23. You are principally in the distillery business?

A. Since 1892 I have been attached to the house of James Watson & Co., Ltd., who are whiskey distillers—before that—

XQ24. Never mind what went on before that. That is since 1892.

534 A. That is since 1892.

XQ25. Do Watson & Co., deal in liqueurs at all?

A. Yes, in Dundee, not in London.

XQ26. Are you in Dundee?

A. No, I am the head of the London office.

XQ27. Now, as to those tests that you went through at Messrs. Spiers and Pond; somebody behind a curtain handed you out some liqueurs to try?

A. There was no question of anybody being behind a curtain.

XQ28. I thought you said there was?

A. This is a testing apparatus invented by the late Mr. William Hudson. 535

XQ29. I do not want to know that.

A. If you would tell me what you do want to know I shall most glady answer it, only when you speak of a man behind a curtain it sounds as if something peculiar was going on.

XQ30. You did not fill up the glasses yourself?

A. No.

XQ31. Somebody filled them up for you?

A. I got there late, I came in after these experts had been tasting.

XQ32. I know you got there sometime in the day; who filled up the glasses, I want to know. 536

A. I cannot tell you. They were filled up when I got into the room.

XQ33. So you cannot say which bottles they came out of?

A. Certainly not.

XQ34. It was only the yellow stuff you were trying? I believe the green was on the market at that time, was it?

A. I do not know.

XQ35. I only ask you what it was you tasted?

A. As I originally informed you, the yellow.

XQ36. The yellow only, very well. Of course, we know you have a very experienced knowledge of the value of the tastes of these things. 537

A. I ought to, I have been 29 years in the trade.

XQ37. We will give you the benefit of that. According to your view, Mr. Lecouturier's brand is very much superior to the others?

A. Will you kindly explain Mr. Lecouturier's brand?

XQ38. The French Government stuff?

A. I am of opinion that the liqueur which is now made at the monastery is considerably better than the Tarragona arrangement.

538 XQ39. Then you will agree with me, it is very much in Mr. Lecouturier's interest to distinguish his liqueurs from the Tarragona liqueurs?

A. I do not know where my knowledge comes in to help you there.

XQ40. But as a wine merchant, if you are selling such a superior thing to another person, you would do all you could to prevent the two things being confounded in the market?

A. Certainly.

XQ41. So that, as Mr. Lecouturier is selling such a superior article here, it is his interest to distinguish his liqueurs from the monks' liqueurs?

539 A. I should imagine so.

XQ42. There is not the slightest difficulty in his doing so, I suppose?

A. That I do not know.

XQ43. I should have thought it was a very easy thing for him to adopt some system of trading so that everybody would know they were dealing in his liqueurs, and not in the monks' liqueur.

A. I think that involves rather a large question. If I were in that gentleman's position, I should send out my bottles as near like the monks did originally.

540 XQ44. That is what Mr. Lecouturier is doing, is it not?

A. Is it?

XQ45. I am asking you.

A. Then I should think he was wise.

XQ46. On those bottles that Mr. Lecouturier does send out, I think he has his own name, has not he?

A. That I could not tell you.

XQ47. I am not now on the monks of Tarragona, Mr. Moore, but I am on the old Chartreuse made by the monks before they left the monastery of Chartreuse.

A. Yes.

XQ48. I am going to ask you a question as to 541
that liqueur and the liqueur which the French government are now making.

A. Yes.

XQ49. They are putting them into identically the same bottles, are not they?

A. Are they?

XQ50. Are not they?

A. I do not know.

XQ51. I ask you; I thought you were an experienced gentleman in these things?

A. I am giving you the account of an unbiased tasting that was very much forced upon me in January, last year. Having done that, I do not 542
think I can help you very much more, I am quite willing to do so if I can, but I do not think I can.

XQ52. Very well, I think that is perfectly fair.

Redirect-examination by Mr. Kelly in behalf of the defendant:

RDQ53. Was there any person present at the tasting before the curtain or behind the curtain other than the gentlemen you have already named?

A. No, certainly not.

RDQ54. Which, in your opinion, is most important, that the government liqueur should closely 543
resemble the old Chartreuse, or that it should not resemble the Tarragona Chartreuse?

A. I think the most important thing is that it should closely resemble the old Chartreuse.

RDQ55. Where have you derived your experience regarding liqueurs?

A. When I was managing the business of T. L. Willis & Co., at 17 Fenchurch street, which occupation I left in 1892, and joined Watson's. May I say that Watson's had a general trade in Scotland, and that anything they want done in connec-

544 tion with that general trade in London I do, but, of course, it is more principally directed to Scotch whiskey.

RDQ56. But you had occasion to deal in Chartreuse liqueurs before you joined the present distillery firm?

A. Oh, yes.

RDQ57. Frequent occasion?

A. Oh, yes.

RDQ58. All the time?

A. All the time.

A. All the time. We deal in everything.

ALFRED MOORE.

545

Mr. C. H. CARDEN NOAD, Barrister at Law, of Lincoln's Inn, London, and Mr. L. B. SEBASTIAN, Barrister at Law, of No. 13 New Square, Lincoln's Inn, London, appeared as counsel for the defendant.

Mr. BENJAMIN MEW PARKER being duly and publicly sworn, doth depose and say as follows:

Q1. What is your full name?

546 A. Benjamin Mew Parker.

Q2. And your address?

A. 60 Mark Lane.

Q3. And your age?

A. 60.

Q4. And your occupation?

A. Wine and spirit merchant.

Examined by Mr. C. H. Carden Noad on behalf of the defendant:

Q5. You are a wine and spirit merchant in the city?

A. Yes. 547

Q6. Will you give us the name of your firm?

A. B. M. Parker & Company.

Q7. You have had considerable experience in the wine and spirit trade abroad?

A. Yes, in Spain and in France and in America.

Q8. How long were you in Spain?

A. Oh, I have been in the sherry trade for 30 years, but I lived there for five years in Jerez.

Q9. In the course of your experience, have you acquired a knowledge of the making of liqueurs?

A. A general knowledge. I have never been a liqueur manufacturer.

Q10. But you have acquired a general knowledge? 548

A. I have manufactured English cordials, such as orange bitters and peppermints, and all the rest of it.

Q11. You can tell us how herbs are used in the making of liqueurs?

Mr. Graham: Which liqueurs?

Q12. (By Mr. Noad): Generally?

A. They are made by an infusion of the herbs in a dry state state suited to the exact requirement. 549

Q13. How are the herbs used, dry or green?

A. Green herbs would have no power; they are used in different conditions of dryness, according to the results desired and the herbs used.

Q14. Are they all used dry enough to pack and travel?

A. No; generally if you got them so dry as that you would lose the freshness of character and strength, too.

Q15. And generally speaking, do you say that herbs should not be dried sufficiently to enable them to travel?

550 A. Yes, I should think that would be a general condition.

Q16. Can you give any instance from your own knowledge of herbs or vegetable matters which should not be dried sufficiently to travel—any particular vegetable?

A. There is a loss of power in the case of the orange peel which is imported from the Mediterranean; it comes very dry. Of course, that rather limits the distances from which the best results are obtained.

Q17. Are there any other herbs you can think of?

551 A. Well, I should say it would apply to peppermint.

Q18. Besides being in business for yourself, you are the taster for Messrs. Spiers & Pond at the present time?

A. Yes, taster and adviser in their wine and spirit department.

Q19. Since when have you been so, roughly?

A. 1897, I think I went there.

Q20. And you are still tasting for Messrs. Spiers & Pond?

A. Yes.

Q21. In March, 1906, did you make a test of
552 the yellow and green Chartreuse liqueurs, as manufactured at the present time by the monks and by the liquidator?

A. Yes, that was at Idle, Chapman & Company's offices.

Q22. Before you describe what happened in the test, will you tell us how a test is made—how the apparatus is arranged, as to where the bottles are placed?

A. You mean as to non-identity?

Q23. Yes.

A. I had these bottles opened in my immediate

presence, so as to be sure that I was tasting the proper things, and then had them put out for tasting and the bottles covered so that I should not know which they were. 553

Q24. The bottles covered over?

A. Yes. At Spiers & Pond we have a special apparatus—a sort of pigeon hole in which the bottle is placed, and the glasses are put in front, and a curtain folds down to conceal the bottles until the test is completed; but this was the same thing.

Q25. And the glasses are filled with the different liqueurs so that you cannot see which liqueur is in which glass? 554

A. Placed in front of the bottles. These were covered over by cloths. I approached them when I was told that the process of concealment was completed.

Q26. What happened at the test that you made of the Chartreuse made by the Pères Chartreuse and by the liquidator, in March, 1906? What was your opinion on the liqueurs when you tasted them?

A. I thought that they were both very good successors to the original article from the monastery under the old regime, and I liked the yellow of the liquidator better than that of the monks at Tarragona. The difference in the green was a little plainer because the sample which I afterwards found to be that of the liquidator was evidently less mature and united than the yellow, having apparently been more recently made, but I considered it a very good follower of the original article, and on comparison with an old sample of the original make I thought it showed very well, and was a proper follower to the original article. 555

Q27. (By Mr. Graham): A good imitation?

A. Yes, a close imitation of the original green

556 of the monks. When we go into these close particulars—it evidently having been very recently made, it was at a slight disadvantage in that respect.

Examination resumed by Mr. Sebastian on behalf of the defendant:

Q28. Were you asked to express any opinion as to which was which of these that you had been tasting without knowing which was which?

A. Yes, and I made a mistake.

Q29. What was your mistake?

557 A. I mistook the liquidator's productions for those of the monks at Tarragona.

Q30. Did you mistake the liqueurs of the monks in Tarragona for anything?

A. Yes, I supposed they were those of the liquidator.

Q31. Were you acquainted at that time with the peculiarities of the original liqueurs made at the monastery in France by the monks?

A. Of course; I have been well acquainted with that generally for many years.

Q32. And with that acquaintance you made a

558 mistake between the two?

A. Yes, I did.

Q33. Tell me what led you to make that mistake?

A. The Liquidator's liqueurs had a greater general similarity to the old articles, and they had a closer resemblance to what I was looking for. Of course, I take the old liqueur as the standard, and look for those which most closely approach it. I did, as a fact, find that in the case of the Liquidator's, but I thought at the time that I had got the others.

Q34. What you were doing was you were trying

to discover which of the two submitted to you most closely approximated to the original? 559

A. Yes.

Q35. And with that intention you came to a wrong conclusion?

A. I did.

Q36. That is to say, you thought you were telling one when you were really telling the other?

A. Exactly.

Q37. With regard to the characteristics which led you to come to that conclusion, would you mind describing what they were?

A. When I tasted them before, I had readily picked them out, and thought I could do it again, 560 but all of them having had so much more time to mature and amalgamate the differences were so subtle that they were hardly identifiable; that is what it comes to.

Q38. Did you detect in the liqueur which you afterwards discovered was the Liquidator's any special quality, either in regard to the spirit or the herbs or anything of that sort?

A. Yes, the spirit appeared to me to be superior to that in the others; probably because it was of French origin, distinctly. It had a French character.

561

Q39. Just with regard to that, is there any clearly defined distinction at all between Spanish spirit and French spirit?

A. Yes, there is always a character of the country of origin in nearly everything.

Q40. With regard to the flavour apart from the spirit, what do you say about that? Was there anything that attracted your attention there?

A. I thought the closest similarity to the original article, which, of course, has always been the point, at least for all consuming purposes—I thought the similarity was greatest in the case of the Liquidator's new make.

562 Q41. Does what you are saying now apply to the yellow only, or the green, or to both?

A. Particularly to the yellow. The green, I have already said, was a little less comprehensible because it had evidently been made so much more recently. The ingredients were not so united.

Q42. According to your experience, would the green or the yellow be more nearly in the condition in which the liqueurs would be offered for sale to the public?

A. The yellow at the present time.

Q43. And why?

A. Because it has more unity, more "round-
563 ness," more complete amalgamation.

Q44. Greater age, perhaps?

A. Yes.

Q45. Now, leaving that, I think that was not the first time that you had tasted these liqueurs?

A. No, I had tasted them previously at Spiers & Pond.

Q46. Which of the two had you previously tasted, the yellow or the green, or both of the same kind?

A. I had tasted the yellow in January.

Q47. Of what year?

564 A. 1905.

Q48. That was a business matter on behalf of Spiers & Pond, was it?

A. Yes, I had the three before me, the original make of the monks.

Q49. Wait a minute; was that on behalf of Spiers & Pond?

A. Yes.

Q50. You had to compare certain liqueurs; how many on that occasion?

A. Three.

Q51. Which were the three?

A. The original make of the monks, shipped previous to the expulsion.

Q52. And the second was what? 565

A. The production of the Liquidator and that of the Fathers at Tarragona.

Q53. Just describe what process was taken in order to conceal the identity when you were tasting them on that occasion.

A. In Spiers & Pond's sample room there are slabs—counters with pigeon-hole boxes at the back and lettered spaces for the glasses in front, and a curtain is drawn down in front of the bottles till the testing is over, to conceal them.

Q54. Between the bottles and the glasses?

A. Between the bottles and the glasses.

Q55. And as a matter of fact, when you made 566
the experiment, did you know, by means of the bottles or anything, which was which?

A. No, I could not see them; all I could see was the glasses containing the liqueur.

Q56. What was the result of the tasting you made on that occasion?

A. On that occasion I identified the three articles tolerably readily, and having taken the original article as the standard which it was desired to follow, I imparted to Messrs. Spiers & Pond that I thought they were both very clever followers of the original article, and that they might adopt which 567
they liked quite correctly.

Q57. You had, I suppose, on that occasion, to form an opinion as to what these immature liqueurs would become when they attained to the age of the original article, as far as you could?

A. Yes, as far as I could.

Q58. At that time could you easily tell that both of the newer kinds were substantially newer than the original article?

A. Oh, yes.

Q59. So that you had to conjecture as to the future really upon your experience?

A. Yes.

568 Q60. And, on that occasion, you formed the opinion which you have just described?

A. Yes.

Q61. Did you taste subsequently the green Chartreuse?

A. Yes, in November of the same year.

Q62. How many samples were submitted to you on that occasion?

A. We had the original article made by the monks.

Q63. At the monastery?

A. At the monastery. We had their present production at Tarragona, and we had the Liqui-
569 dator's monastery production.

Q64. Any other?

A. There was a fourth spurious article, which had been offered by somebody sometime ago, and they put that in as a sort of opportunity to examine it. It had not been considered worth notice before.

Q65. To see what your opinion was worth?

A. Yes.

Q66. On that occasion, was the process of concealment the same as in January?

A. Exactly.

Q67. And when you made that experiment, had
570 you any means of knowing by means of the bottles and so on, which was which?

A. Oh, no.

Q68. Tell me what happened on that occasion.

A. I immediately rejected the spurious article as having nothing to do with it, and I identified the other three correctly.

Q69. And by that you mean to say that you formed a correct opinion as to from which source the three kinds came?

A. Yes.

Q70. Now, tell me what guided you in coming to that conclusion?

A. I identified the original article by its superior condition in regard to age; its superior condition in regard to age gave me the clue to it. 571

Q71. And with regard to the other two?

A. The other two I identified—I thought the Liquidator's had a more distinctly French character in regard to materials.

Q72. What do you mean by "in regard to materials?"

A. Probably the spirit was the most important item.

Q73. But what about the herb flavour?

A. The herb flavor I considered best in the Liquidator's make. 572

Q74. Is there any characteristic of that herb flavour that comes to your mind in particular?

A. Its agreeable freshness and fragrance. There is a freshness of fragrance which is very attractive, arguing, of course, very good condition on the part of the material.

Q75. As a matter of fact, do you know whether it is made with the flower or with the leaf of these herbs? In fact, does the flavour that you detect apparently come from the flower, or from the leaf, or what?

A. I should think very possibly from herbs in flower—I should think so. 573

Q76. You think herbs in flower?

A. I should think so.

Q77. Is there any flavour that reminds you of the flower, then?

A. In the case of the yellow there is a honey character which, if not from honey itself, must be from a material giving it an origin common to that of honey.

Q78. I will take all three. In January, 1905, which had that honey flavour more clearly?

A. It was not so much then that I noticed it.

574 Q79. If you did not notice it, I will not ask you to say anything you are not quite clear about. Go to November, 1905; what then?

A. That was the green. That particular detail applies to the yellow.

Q80. That is, more especially applicable then to the testing on the last occasion?

A. In the case of the green, I noticed the characteristics of the spirit more, because, as a matter of fact, it is stronger—it impresses itself.

Q81. The spirit more overpowers the herb flavour, I suppose?

A. Yes.

575 Q82. But with regard to the yellow, I suppose it comes to this, that you found more of the honey flavour in the Liquidator's than in the other—that is the long and short of it?

A. There are lots of "insensible" details which it is difficult to identify, which guide one.

Q83. Which of these three details do you think produces the most workable results with regard to the condition in which the stuff will be placed upon the market?

A. The last one, because at the present time they are in better condition by virtue of the time they have had to acquire maturity in.

576 Q84. In which condition, that of January, 1905, or November, 1905, or the present year—do you think the result of the testing would be most reliable for future use?

A. My last tasting, with the advantage of the information of the former. That is what it comes to. The last tasting has the most reliable result.

Q85. Because the new liqueurs were more nearly in a saleable condition; is that what it comes to?

A. Yes; by this time the yellow must be more than a year old. It is very different to tasting when it was manifestly quite new.

Q86. I think you told us that as the result of the earlier tastings which you say now were less satisfactory than the latter one—in the earlier testing you made a report to Spiers & Pond's, in which you said in each case they could take that which they liked; is that what you said? 577

A. That either was suitable.

Q87. As the result of those reports, do you know whether, as a matter of fact, Spiers & Pond gave an order for either?

A. Yes, I know they did give an order for the Liquidator's articles.

Q88. Have you ever heard of any complaint being made with regard to it since? 578

A. No; it seems to have quite automatically succeeded the former article. If there had been any complaint, that would have been brought to me at once; they are very fond of complaining and fancying that it is my fault.

Q89. You generally get it if there is anything wrong?

A. At once.

Cross-examination by Mr. J. C. Graham, on behalf of the plaintiff:

XQ90. You have been, as you have told us, for a long time in this business of liqueurs? 579

A. In the wine and spirit trade generally rather than liqueurs. I am a wholesale wine and spirit merchant at the present time, and have been in the sherry trade principally all the time as shipper or as agent.

XQ91. Are you speaking as an expert in liqueurs or not?

A. Yes, I am an expert in all kinds of wines and spirits and liqueurs. Since I have been at Spiers & Pond, if I do not know, it is my duty to acquire

580 knowledge. I have a very good general knowledge for 40 years.

XQ92. I am not suggesting that you have not—I am putting it the other way, up to 1904, when the monks were turned out of France—

XQ93. By Mr. Sebastian: Can you give us the date? When did it happen, as a matter of fact?

Mr. Graham: I cannot tell you; sometime in 1904, I think.

Mr. Couldwell: 1903, I think.

Mr. Graham: I will take it 1903.

581 Mr. Sebastian: I only want to know when you are putting your question, that the facts on which you are basing it are right.

XQ94. By Mr. Graham: We will take 1903 as the date. Up to 1903 you never heard of any Chartreuse being sold on the market except that which was made by the monks?

A. No, the monks had the monopoly, of course.

XQ95. And they sold it in immense quantities?

A. Yes, I believe it was a large business.

XQ96. And if anybody had mentioned the word "Chartreuse" to you, you would at once have un-
582 derstod it meant the monks' Chartreuse?

A. Oh, yes.

XQ97. When anybody mentions the word "Chartreuse" to you now, why does it not still mean the monks'?

A. It means Chartreuse as before to the public, at all events.

XQ98. That is what I thought, but to you, knowing that they have been turned out, it may mean the French Government stuff?

A. No, it would not, because the monks do not call their present production Chartreuse, they call it liqueur des Pères Chartreux.

XQ99. I understand; but to a person who did not understand that the monks had been expelled from France, the word "Chartreuse" would still indicate the old liqueur of the monks? 583

A. Oh, I should think so, yes; that is to say, the production of the monastery.

XQ100. You know the monks say they make their stuff at Tarragona, according to a secret?

A. Yes.

XQ101. You have heard that?

A. Yes, no doubt they do.

XQ102. Obviously, you cannot tell—by tasting—what the secret is?

A. When I tasted the newly made liqueurs— 584
which I had never done before because they did not ship them new, but at maturity—I was unable to identify ingredients in a way I had never been able to do before, because they were still in a separate condition.

XQ103. I understand that, but what I was putting to you was that it was quite impossible that the monks might have made their Tarragona liqueur according to the secret, and Lecouturier might have made it not according to the secret, and still they would have had these particular flavours that you noticed?

A. Yes, only that brings you to the consideration of the origin of the ingredients that are at present available to them. 585

A. Yes, I know nothing about that. All I was going to say was, on the mere fact of their tasting somewhat alike, as apparently they did at Spiers & Pond's, you were satisfied with them all?

A. Oh, I was satisfied with them both as a good follower of the standard.

XQ105. That fact would not lead you to suppose that the secret had not been used in one case and had been in the other?

A. I thought the Tarragona article exhibited a

586 very complete knowledge of the ingredients, but I preferred the result of the French ingredients as still in use by the Liquidator at the monastery.

XQ106. Going to that interview in March, 1906, as I understand it, your evidence was rather long, but that was not your fault at all—you at first thought that the Tarragona stuff was better than the other?

A. No, I did not intend to convey that.

XQ107. You made a mistake?

A. I mistook the identity, which shows they are very much closer now than they were before the maturity given them by age since I first tasted
587 them.

XQ108. We will put it this way—when you originally tasted them before you knew what they were, what was the order of merit?

A. The order of merit was in favour of the original article to begin with, the others I did not find any conspicuous comparative merit in. The object—do you not see—was to ascertain how we were going to follow the original article, the supply of which was at an end.

XQ109. I can quite understand your object. I only want to know what it roughly came to—what you found was, that the original you thought was
588 the best?

A. Yes.

XQ110. And that the Liquidator's stuff and the Tarragona stuff were about the same?

A. About the same, and, both good followers of the original.

XQ111. And that was, roughly speaking, what you found with respect to the green?

A. Yes.

XQ112. And that difference of value is accounted for by age in both cases?

A. I think so.

XQ113. About this honey and spirit flavour, do you attach any substantial importance to that? 589

A. No, not for purposes of consumption. Of course, when a man with special knowledge makes an enquiry and is going to be paid for it, he wants to go into details in a way that is not necessary for other purposes.

XQ114. Yes, I quite agree. Do you remember who was present when you made that test at Spiers & Pond?

A. There were two occasions there, are you speaking of January?

XQ115. Take the January one first.

A. The Managing Director, Mr. Freshwater, was there—and I was reminded by Mr. Alfred Moore the other day, that he was also there, remember it quite well now—and I think one of the other directors, but I am not quite sure from memory which, it is all recorded in the book. I may tell you that they tasted—on occasions like that, to which great interest is attached, all these gentlemen would taste with me, but the result is mine, and I must tell you that they all varied in the most amusing manner. 590

XQ116. You three experts could not agree?

A. They did not identify them as I did; they placed them according to their ideas of merit, with the utmost confusion, so that it showed me the whole thing lay in a very small compass. 591

XQ117. When you did come to arrange them in order of merit, you were not agreed?

A. Oh, no.

XQ118. You arranged them in different orders of merit?

A. These gentlemen arranged them differently, I did not attempt that. I was looking for the best article to follow the original, and was much relieved when I found I need not perplex myself very greatly about it, because I found I was all right.

592 Redirect-examination by Mr. Sebastian on behalf of the defendant:

RDQ119. Did these other gentlemen who were present on that occasion act as experts on behalf of Spiers & Pond?

A. No, I am the expert, but when it comes to conclusions, the managing director is the man who ultimately gives orders, and completes transactions—Mr. Freshwater. I frequently say, "Well, this is what I have tasted." I very often return two, if there are two articles selected out of a number that I think equally suitable. I say,
593 "Either of those, but *that* for preference." Sometimes in carrying out a transaction to the finish an unexpected difficulty arises as to one man; a man may have sold part of it, or something of that kind; so that in order to avoid going all over it again, I often return two; but that does not apply to this.

RDQ130. You told us what you placed before yourself was the question which of the two newer ones was the most suitable follower to the old one?

A. Yes.

RDQ121. Did these gentlemen adopt that line, too, do you know?

594 A. I should think so, because that is the thing to consider, they have got to please the public.

RDQ122. You were asked about your experience in regard to liqueurs. As a matter of fact, Spiers & Pond, I take it sell large quantities.

A. They sell a great number of liqueurs—yes, a considerable quantity.

RDQ123. And their business in liqueurs is an important one?

A. Oh, I should think, very.

RDQ124. Are they guided by your opinion with regard to what they select and sell?

A. Yes, I am supposed to have so good a general knowledge of the whole subject as to be a competent adviser. If they could afford to have two or three testers I should say: You may possibly find a man to beat me at a particular branch, but I am supposed to know all, and do, practically. 595

RDQ125. At all events, they conduct their business on your opinion?

A. Yes.

Mr. Graham: This is a very excellent advertisement for Mr. Parker, but I do not see what it has got to do with the case.

The Witness: Well, sir, I hope you do not think there is any harm in my being advertised. When there is no payment required I like it. 596

RDQ126. By Mr. Sebastian: You told my friend—I suppose there is no doubt about that—that up to 1903, Chartreuse meant the liqueur made at the monastery by the monks?

A. Yes.

RDQ127. And that liqueur, I suppose, was made of certain spirit and of certain herbal materials?

A. Excellent materials; with an excellent result. 597

RDQ128. So far as you could tell from the experiments you have made since, is the Liquidator's liqueur made of the same materials?

A. I should think so.

RDQ129. And if there is any secret in the matter, is it apparently, according to your judgment, made in accordance with the secret?

A. Yes, by the accuracy of the result, that is inferred.

RDQ130. Now, with regard to the monks who have now gone away—at Tarragona—you made

598 the statement that you preferred the result of the French ingredients as used by the Liquidator?

A. I think so.

RDQ131. Were the ingredients, so far as your judgment was concerned, used by the monks at Tarragona different in any way?

A. There is a difference in result which I attribute to being made in another country.

RDQ132. Just develop that a little. What do you mean by that. Do you mean that if they were French?

Mr. Graham: Do not say "if;" ask him
599 what he means.

The Witness: To give an example, the character of the water in Spain is different to that of France. The character of water in all countries differs one from the other.

RDQ133. Assuming that the materials were French, would the transit to Spain make any difference?

A. I should think it would be disadvantageous to such delicate articles as herbs, perhaps.

RDQ134. Why would that have anything to do with it—the condition that they would have to
600 travel in, or what?

A. Yes, herbs would have to be more highly dried for export to another country, that might not be advantageous.

RDQ135. Would that be prejudicial—would that affect the flavour?

A. I think it might affect the fragrance with regard to its freshness.

RDQ136. And to sum it up, in your judgment, when the Liquidator's new liqueur has attained the age of the old, what will the result be?

A. An exceedingly good succession.

RDQ137. By Mr. Sebastian: I cannot ask you, 601
of course, to compare them, because the time has not come yet, but that is your opinion, anyhow?

A. Yes.

(It was stated by Mr. Graham that Mr. Bonnet would have liked very much to be present at this examination, as he had controlled the litigation in France, but unfortunately he had been prevented from coming).

B. M. PARKER.

Examination taken the 31st day of March, 1906, reduced to typewirting and by the witness subscribed and sworn to the 2nd day of May, 1906, 602
before me.

Signed: F. W. FRIGOUT,
Commissioner.

Session of Thursday, April 5th, 1906, at 2 P. M.

Before Frank Hallason, Consul General of the United States of America, at Paris, Commissioner.

Present: Mr. BONNET, for the Plaintiff. 603
Mr. KELLY, for the Defendant.

By Mr. Kelly (to Mr. Bonnet): Here are Messrs. Tièche, father and son. Do you desire that Mr. Tièche, junior, should leave the room during the testimony of his father?

By. Mr. Bonnet: Yes.

(Mr. Tièche, junior, leaves the room).

Examination of LOUIS STEPHANE TIECHE:

LOUIS STEPHANE TIECHE, of Quaie de Bercy, Charenton, near Paris, distiller, aged fifty-

604 two years, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. Kelly:

Q1. What is your name?
A. Louis Stephane Tièche.
Q2. What is your age?
A. Fifty-three years—fifty-two, rather.
Q3. What is your address?
A. Charenton, Quaie de Bercy, Usine Cusenier.
Q4. What are your occupations?

605 A. Distiller, director of the factory of Charenton. If you prefer, director of all the Cusenier factories, technical director.

By the Commissioner: Technical director?

The Witness: Director of the factory of Charenton, and technical director of the factories of Charenton.

Q5. Do you know Chartreuse?
A. Yes, sir.
Q6. Have you ever made it?

606 A. Since I have taken up my abode at Fourvoirie I have been entrusted by Mr Cusenier with the making of the liqueur.

Q7. Before making Chartreuse itself, have you ever made a liqueur which resembled Chartreuse?

A. Like all distillers, I made for a long time a liqueur which was denominated the yellow liqueur (liqueur jaune).

Q8. Did this "liqueur jaune" (yellow liqueur) resemble Chartreuse?

A. No, it is a liqueur which approaches it, you know, but which did not resemble Chartreuse—approaching very much to Chartreuse.

Q9. Approaching very much to Chartreuse? 607

A. Approaching very much to Chartreuse.

Q10. But was not absolutely like Chartreuse?

A. Not absolutely like Chartreuse.

Q11. When you were entrusted with the manufacture of Chartreuse, what did you do in order to manufacture it?

A. When I went to Fourvoirie, you know, I found myself in the very best conditions to be able to manufacture the liqueur. I found myself amongst plants cultivated by the Fathers, by the Carthusian Fathers, plants which altogether differed from the plants which we had had up to that time for the manufacture. I took these plants. I 608 studied them, and by dint of trying, by experiments, by tasting, by the treatment of each plant, I succeeded in composing Chartreuse.

Q12. Have you the formula of Chartreuse? I mean the formula that is called secret of Chartreuse?

A. Oh, so-called secret? I believe that the formula in principle does not exist, because it is due especially to plants which may altogether vary. To be able to say whether I have the formula of the Carthusians it is necessary that I should compare theirs with ours, but I believe that what we have obtained, the result that we have obtained, as well 609 as in the opinion of tasters, since both in France and abroad they consider that we have manufactured a liqueur which is in some sort the continuation of that manufactured by the Carthusian Fathers at their old distillery at Fourvoirie.

By Mr. Bonnet: Mr. Commissioner, will you kindly ask the witness to stand a little further off—

By Mr. Kelly: Place yourself next to Mr. Bonnet.

610 By Mr. Bonnet: I desire that the witness should be a little further from the notes that Mr. Kelly consults.

By Mr. Kelly: Place yourself next to Mr. Bonnet, I beg of you, to please me.

By the Commissioner: Will you have the kindness to speak distinctly, a little more slowly, in order that the stenographer may hear distinctly?

Q13. What conclusion do you draw from that so far as concerns the secret, or the so-called secret formula?

611 A. I conclude this, as I said just now, that the formula is due—that is to say, that the liqueur is specially due to the quality of the plants which grow at the Grande Chartreuse, which were cultivated by the Carthusians at the Convent and its annexes, at the Correrie and at Fourvoirie.

Q14. Do you believe or not that there exists a secret formula?

A. I do not believe it, because the formula, if it exists, must be invariable, and as the plants are altogether variable year by year, according to the temperature, according to the climate, the season in which they are harvested, an equal weight of a

612 plant might give more or less flavour.

Q15. Do you know a Bonal liqueur?

A. Yes, Mr. Bonal is a distiller at Saint Laurent du Pont.

Q16. Does the Bonal liqueur resemble Chartreuse?

A. It is sold as a liqueur which is almost like Chartreuse, but which is not altogether Chartreuse. It is a good imitation, what is called a good imitation, but I consider it is not Chartreuse. That is my opinion.

Q17. Does it sufficiently resemble Chartreuse for one to say that there is no secret formula?

By the witness: If it resembles— 613

By Mr. Kelly (to the stenographer): Will you repeat the question?

(The stenographer reads over the question).

A. It comes very near it—yes, it comes very near it.

Q18. Do you use in the manufacture of Chartreuse plants in a fresh state or in a dry state?

A. Both in a fresh state and in a dry state.

Q19. How have you managed to use certain plants in a fresh state?

A. By trials, you know, by successive trials. 614
When a liqueur is made, one tries to come as near to it as possible. I found with the plants that I had at my disposal, that is to say the fresh plants, that in using them I could manage to manufacture the liqueur in conformity with that of the Carthusians. It is by successive trials, by experimenting, infusions, distilling, that we have arrived in some way to complete the formula, the process, the formula that we had before to manufacture our yellow liqueur.

Q20. Do you employ them all in a fresh state?

A. Oh, not all, a part.

Q21. And a part in the dry state? 615

A. A part in the dry state.

Q22. When you say in the fresh state, do you mean to say as soon as they are gathered?

A. You gather them I suppose today, and tomorrow you can use them fresh.

Q23. A witness called Mr. Massignon declared that if you used plants in a fresh condition you would obtain very weak alcoholates.

A. That, that may be the opinion, you know, of a witness, I say what we do, we use the plants in a fresh state and the result that we obtain is suf-

616 ficient for us, to manufacture the present liqueur "La Chartreuse."

Q24. How many plants, how many kilograms of plants in a fresh state do you put per kilogram of alcohol?

A. That may vary from one kilogram to 20 kilograms, from one kilogram to 20 litres. There are infusions which may be treated from one kilogram to ten litres, as there are others from one kilogram to 20 litres. I make, you know, certain reserves as regards the process used for the proportion.

Q25. Is it possible by modifying these proportions to arrive at the desired strength of the alco-
617 holate?

A. Ah, but remark that the infusions, you know, the infusions may altogether vary as to degree. You have infusions which may have 30, 40, 50, 60 degrees; therefore the degree of the alcoholate has nothing to do with the manufacture. We prepare our alcoholate, and whatever may be the degree, whether it be 30, 40, 50, 60, what we can use has nothing to do with the flavour that we wish to obtain to prepare the liqueur.

Q26. If the plants which you use in a fresh state that is to say, twenty-four hours after being cut, had to make a journey, what would be the result?
618

A. I consider that if the plants which are gathered fresh had to make a journey in that state, the alteration would go on progressively, the plants would rot, would alter—I do not know if I can use the word rot, but alteration would be better—Like a vegetable, or a fruit, which cannot stand a journey, the plant would be completely altered, the perfume would no longer exist, the perfume would be completely destroyed and the color also; there would be what might be called a fermentation of the plant which would destroy the whole of it.

Q27. To what do you attribute your success in the manufacture of the Chartreuse liqueur?

A. I have said that the Chartreuse liqueur can only be manufactured at Fourvoirie. I attribute the success more scpecially to the plants, as one may attribute the success, you know, of a brand to the brand itself. The plants, according to their altitude, their climate, have perfumes quite different from one another; if Chartreuse can be made at the Chartreuse, it is more especially thanks to the plants which grow in the group of the Chartreuse, and which were cultivated by the Carthusians. 619

Q28. For what was the yellow liqueur which you formerly made used?

A. For what was the yellow liqueur used? 620

Q29. The yellow liqueur ("liqueur jaune") that you formerly made, you know?

A. That we make at Fourvoirie?

Q30. No, the "liqueur jaune" (yellow liqueur)?

A. It is a liqueur which was sold in the trade like all liqueurs which sell in the trade, like curacoa, raspail, anisette. It is a liqueur which was asked for by the dealers to sell like all liqueurs sell.

Q31. Several witnesses called by the plaintiff have declared that the "liqueur jaune" was only used to fradulently fill the empty bottles of the Carthusians, 621

A. As to knowing, you know, what the retailer the dealer to whom we sold the liqueurs might use it for, I cannot guarantee whether to fill the Chartreuse bottles, but we, we sold that liqueur in a special bottle with special label: "Liqueur Jaune."

Q32. Do you know whether the public drinks your liqueur under the label "Liqueur Jaune?"

A. Certainly, yes, sir.

Q33. At what price do you sell the "Liqueur Jaune" (yellow liqueur)?

A. Here, at the firm of Cusenier, you mean?

692 Q34. Yes.

A. Four francs the litre.

Q35. And at what price do you sell the Chartreuse?

A. Six francs, six francs fifty.

Q36. Did the "liqueur jaune" have the pretension to have the same qualities or to be manufactured with the same ingredients as Chartreuse?

A. It is rather the pretension, you know, it is rather the pretension of every distiller, but it was not the same, it approached it, but it was not the same as the Chartreuse that we make at present.

Q37. It approached it as much as possible?

693 A. As much as possible.

Q38. What is the elixir of the Carthusians?

A. The Carthusians, you know, manufactured the elixir, the green liqueur, the yellow liqueur, the white liqueur, and specifics. It is a product, you know, a product that the Carthusians made, the basis of which was plants, very concentrated, which was above all used like *eau de melisse* (balm water), *alcohol de menthe* (spirit of peppermint), in a small quantity, a spoonful with sugar.

Q39. Is there any connection between the elixir and Chartreuse?

694 A. Yes, a certain connection, with a slight modification. I do not mean to say that it is quite the basis, but it approaches it very much so, it is almost the green Chartreuse, without the sugar, but stronger—it is the flavour. The elixir employed in certain proportions might almost constitute the green liqueur.

Q40. It is manufactured from almost the same formula?

A. With a little variation, there are plants a little different, but many of the plants which enter into the composition of yellow Chartreuse, for example.

Q41. Are the variations important? 625

A. A little, very little—not very important. A little variation is needed to make the green liqueur.

Cross-interrogatories by Mr. J. Bonnet, representing the plaintiffs:

XQ1. You told us just now, sir, that you were the technical director of the Cusenier factories?

A. Yes, sir.

XQ2. Are you not related to Mr. Cusenier?

A. Yes, sir, I am his first cousin. My mother and his father were sister and brother. 626

XQ3. As you are the technical director of the manufacture of liqueurs, you must necessarily have an extensive knowledge of chemistry?

A. Fairly, yes, sir.

XQ4. I heard you just now express some very clear opinions about alcoholates, that is, about the alcoholic solutions of aromas; it follows from that that such questions of organic chemistry must be familiar to you?

A. Yes, sir.

XQ5. Do you know what is called a chemical function?

A. Chemical function? If you will kindly be more precise, I do not exactly grasp it. 627

XQ6. In the current language of organic chemistry chemical functions play a very importnat role, notably when it concerns essences, when it concerns aromas—

A. Yes, sir.

XQ6. And as I propose to put some questions to you about aromas and about essences, I ask you beforehand if you know what is called a chemical function?

A. I do not well grasp the question. What do

628 you mean?—A chemical function?—I would like you to put a question to me that I might answer you exactly—chemical function is rather general.

XQ7. Well, there is a definition in chemistry of the chemical function that all chemists know?

A. I am not here to give a lecture on chemistry. Put a question to me.

XQ8. My question is simple. What is a chemical function in chemical terminology? Do you know what an ether is?

A. An ether is the combination of an acid with a corresponding alcohol, for example, the combination of acetic acid with ethylic alcohol. The only
629 product which bears the name of ether is not an ether; it is what is called sulphuric ether; the first ether which was made, I do not mean by the chemists, but those who preceded them, the alchemists, called it ether on account of its fluidity. The ethers defined in chemistry are what may be by analogy compared with salts, like chloride of sodium, which is the combination of hydrochloric with sodium. Ethers are the result of the combination of an acid with an alcohol; if we take acetic acid with ethylic alcohol, we have acetate of ethyl; if we take acetic acid with amylic alcohol we have acetate of amyl, which is the perfume commonly
630 called essence of pineapple. If you take butyric acid—I think that explanation of ether suffices—

XQ9. In every liqueur you acknowledge that there are sugar, alcohol and aromas?

A. Yes, sir.

XQ10. Well, sir, when you add alcohols how do you satisfy yourself as to their degree of purity?

A. The degree of purity in the manufacture?—It is necessary on the contrary that an alcohol should be impure for the manufacture of liqueurs, impure from a chemical point of view, for you know that it is acknowledged, it is said, it is pretended that

the more aromatised an alcohol is the more impure it is. Thus, cognac, the more aromatised it is, the older it is, the more impure it is from a chemical point of view. Therefore the alcohols of the North, which are neutral, completely neutral, without odour, without taste, are purer relatively than the alcohols of the South, but they are worth nothing for Chartreuse, and I opine that a glass of *cognac* (brandy) well aromatised is more agreeable to the taste and to the smell than an alcohol from the North, although classed impure by chemistry and hygienists. 631

XQ11. You arrive at this conclusion, I do not say I dispute it—that if a glass of well rectified wine-alcohol is taken one may be able to get an alcohol that may be said to be a commercial alcohol? 689

A. Certainly, sir, certainly.

XQ12. Under these circumstances do you consider that it would be possible, by an analysis of Chartreuse, for example, to say whether the Chartreuse had been made with a commercial alcohol or a wine-alcohol?

A. That question, you know, I would not like to reply to in a decided manner, but chemistry might answer it. 638

By Mr. Bonnet: I address myself to the chemist.

By Mr. Kelly: I object, the witness has never declared he was a chemist, he came forward as a distiller and not as a chemist.

XQ13. The problem, sir, that was put to you and which consisted in manufacturing a product, a Chartreuse approaching as near as possible, and even identifying itself completely with the classical Chartreuse which all the world knows, evidently

684 necessitated on your part that you should bring into play all your sagacity and all your knowledge. Well, I appeal, since you are not a chemist, it appears, I appeal here to the distiller, and I say to him: When you had to do with the Chartreuse, did you first of all ask yourself whether the Chartreuse was made with wine-alcohol or with commercial alcohol?

A. We knew that it was made with wine-alcohol.

XQ14. How did you know it?

A. By the quantities of alcohol that we knew had been bought at Voiron.

685 XQ15. Therefore it is entirely from an indication from an Administration that you were able to know that Chartreuse was made with wine-alcohol?

A. Yes, sir, I know that Chartreuse was made with wine-alcohol since I am a distiller.

XQ16. Did not analysis permit you to obtain this result?

A. At the present time there is a prize of 500,000 francs offered to the chemist who succeeds in distinguishing the origin of a wine-alcohol or of a commercial alcohol, I think

686 XQ17. I thank you for this indication. I continue: Chartreuse, like all liqueurs, I may say, is made with sugar—

A. Yes, sir.

XQ18. Which may be cane sugar or beet sugar—

A. Yes, sir.

XQ19. Do you know of any means permitting the distinction of cane sugar from beet sugar?

A. I do not know of any.

XQ20. Chartreuse, sir, like all liqueurs, is constituted by aromas?

A. Yes, sir.

XQ21. Alcoholic solutions of aromas?

A. Yes, sir.

XQ22. Otherwise called alcoholatures. You have told us a while ago, during your examination by Mr. Kelly, that you had come to the conclusion that the success of the real Chartreuse was due to the plants of the Chartreuse? 637

A. Yes, sir.

XQ23. Do you think that the proportion of the plants also plays a role?

A. The proportion of the plants—

XQ24. The plants to be used. Do you think that it is indifferent whether more or less of certain plants are used?

A. But the proportion varies like for cooking—the same plant might have more or less aroma, it is the business of the distiller to rectify that. If the plant has more or less perfume, according to the years, when you manufacture you modify your formula according to the intensity of perfume of the plant itself. 638

XQ25. As I desire that no misunderstanding should exist, we will discuss as to a specified year on plants which have a given degree of aroma that year.

A. Yes.

XQ26. Let us suppose that hypericum—I know nothing about it—enters into the manufacture of Chartreuse, and let us suppose that angelica enters into the manufacture of Chartreuse. I ask you whether it makes any difference to put more or less angelica or more or less hypericum. Is there not an interest in adopting determined proportions of aromas obtained from these different plants? 639

A. In order to adopt invariable proportions of aromas it would be necesary that the plants should not vary either. But you use plants—you quoted the plants of this year, you use them at the beginning of the season, they go and lose a quantity of their watery principles. For the same weight you

640 have sometimes more perfume, sometimes you may have some aroma which evaporates—you are obliged to verify your manufacture each time.

XQ27. Well, sir, you have told us that you make your liqueur with alcoholates. You make solutions.

A. Alcoholatures and infusions.

XQ28. And infusions. Does it matters much, in the Chartreuse which you have adopted and which you deliver to the public, whether you use a more or less large quantity of such and such an alcoholate?

A. Why, if I want to reach the same result I
641 shall be obliged, by "tâtonnement," to make up the deficiency if any is lacking from one plant by putting a little more.

XQ29. You have just made use of a word which I retain: "By tâtonnement" (grouping in the dark). There only exists then, in your opinion the method of "tâtonnement" (groping) in order to determine the suitable quantities of component parts?

A. You have the principal basis, you know, but this basis has need to be verified at each manufacture, it is necessary to taste, to ascertain for yourself if the perfume is really the same, by comparison.

642 XQ30. And it is only by the taste then, that you arrive at this result?

A. Oh, of course, the taste has a lot to do with it.

XQ31. Are there other methods, more scientific methods?

A. Oh, no, I do not think that there are scientific methods to determine the composition of a liqueur, unless, in my opinion, by very rough methods, which could not result in proportioning the components of a liqueur.

XQ32. There is, then, only the taste which can serve as a guide?

A. Quite so. 643

XQ33. And, as you have clearly stated, it is by "tâtonnement" (groping in the unknown) that one arrives at the result that one is looking for?

A. That I arived at in the first place by "tâtonnement" (grouping in the unknown). Now, when you have pretty nearly an established formula, at each manufacture you rectify the manufacture you have made, but this manufacture, one cannot say that it is unchangeable each time. Every time it needs a rectification either more or less.

XQ34. You know, sir, that it is possible to proportion essences, when the essences are isolated?

A. Yes, sir. 644

XQ35. And you must necessarily know the method of proportioning?

A. Perfectly.

XQ36. Do you not think, sir, that if one created alcoholates having all the same degree of concentration in aroma for a stated plant, a concentration obtained by the means of the analysis to which I made an allusion just now, it would then be possible to always have the same formula in order to obtain a liqueur, whatever the richness of the plant in aroma may be?

A. I do not think so. 645

XQ37. Will you give me the reason for that? You have quite understood what I said to you? You take an alcoholature of balm-mint, for instance, at 20 per cent—in order to have an idea—an alcoholature of hypericum at 22 per cent. In order to obtain an alcoholature of hypericum or balm-mint under these conditions, it will be necessary to have a quantity of plants varying according to the years, according to the period of the year at which the plant will be treated, at which the plant will be gathered, but it will have been decided, for this alcoholature, for example, by the

646 method through aldeide the richness in essence, and one will have fixed alcoholature. These alcoholatures having been graduated, is it not possible to thus have the means of manufacturing, with an unalterable formula, a given liqueur?

A. I have not tried it, I could not answer you. I have not made these experiments.

XQ38. At what period did Mr. Cusenier entrust you with the manufacturing of the liqueur known under the name of Chartreuse?

A. Do you mean at Fourvoirie?

XQ39. At Fourvoirie?

A. Fourvoirie, I left on the 14th of July.

647 XQ40. In what year?

A. 1904.

XQ41. You spoke to us of investigations which you made, did you make them all alone, these investigations, in view of arriving at the liqueur which you sell?

A. I made these researches in collaboration with Mr. Cusenier.

XQ42. With Mr. Cusenier?

A. Evidently, as these labors have need, when trials are made, of being controlled by persons equally competent.

XQ43. Did you not have recourse to other col-
648 laborators?

A. I have had recourse to other collaborators, yes, sir.

XQ44. Could you let me know these collaborators?

A. Oh!———

XQ45. Are they chemists?

A. They are chemists, yes, sir.

XQ46. Could you let me know the formula or the indications at which you arrived by your personal labors or thanks to the collaboration of which you have just spoken?

A. I have not quite grasped the question, sir. 649

XQ47. You have told us that you applied yourself to a work of investigation in order to reconstitute Chartreuse by synthesis, you have, therefore, obtained a formula—as it were—which is the result at the same time of your personal labors and the result of the collaboration of other chemists. Could you let me know the results at which you arrived?

A. But the results at which I arrived are these: I am able to make a liqueur which is appreciated by the public and which is considered as the continuation of the Chartreuse which was manufactured— 650

XQ48. Could you let me know the plants which you were induced to use?

A. I have not the right to divulge that secret—of process, it does not belong to me.

XQ49. You acknowledge then that it is a secret?

A. No, not a secret, I say: the process of manufacturing does not belong to me, I cannot tell you the process nor the plants entering into the composition.

XQ50. Do you think that by analyzing it is possible to find the plants which you use for the making of your Chartreuse?

A. I think that a very competent chemist would be necessary, you know, I would not like to give an opinion. If you asked the opinion of a chemist he would be able to tell you better than I can, but I do not think so. 651

XQ51. Have you tried to analyze Chartreuse, the real Chartreuse, or the Chartreuse made by the Carthusian Fathers?

A. But analysis—from what point of view? What we call analyzing, it is to taste the liqueur, to see its bouquet, to compare it and tell the degree of alcohol and sugar. But otherwise, to ana-

652 lyze, the analyzing of the liqueur itself, I think that if it could have been done there are chemists who would have done it. If one had been able to proportion separately, as you said just now, the ingredients constituting Chartreuse, if that done, it would have been done a long time ago.

XQ52. Do you believe that analyzing permits, if not to proportion the constituent ingredients at least to recognize them, in a word to make the quality analysis?

A. I do not know, I cannot answer affirmatively.

XQ53. Do you think you know the proportions of the different essences that the Carthusians used
653 in the making of their liqueur?

A. Used, or use?

XQ54. Used, if you like?

A. Well, the result which we have obtained, you know, since we have been manufacturing; I repeat again, as the Chartreuse which we make is recognized as the continuation of that which was made by the Carthusians—we can say that we have become able to reconstitute it.

XQ55. Look here, sir, you are, you have said at the beginning, pretty well informed on the question of chemistry, although my adversary has pointed out to me that you do not present yourself
654 as a chemist—Well, you have certainly heard, I suppose, of artificial indigo. Well, artificial indigo gives exactly the same result as natural indigo, and yet artificial indigo is not obtained in the same way as natural indigo—

A. By synthesis, is it not?

XQ56. I am going to say: Upon what authority—I am speaking here to the chemist, to he who is posted on all scientific questions—do you say that the Chartreuse which you sell is manufactured with the same plants as the Carthusian Fathers, is manufactured in the same way, simply because you

affirm that you have obtained the same taste? On what authority do you make such an affirmation? 655

A. On this, on the taste. If the proportions were not the same the liqueur would not be the same, for each plant having its particular flavor, if that varied in a rough way there would be a taste more or less pronounced.

XQ57. You know of "vanilline?"

A. Yes, sir.

XQ58. Vanilline has the same taste as vanilla?

A. For some people, but those who want to make something good do not use it.

XQ59. You acknowledge there is a notable difference between the origin of the two products? 656

A. But one is obtained by synthesis, the other is the natural produce of a plant.

XQ60. Therefore, I again put the question to you: Is one authorized to come to the conclusion that, because two products have the same taste—which, moreover, is contested—to conclude that they are made in the same manner?

A. You spoke just now of Vanilline, if we keep on these lines—

XQ61. I am willing to argue with you, but I put a question.

A. Just now you spoke of vanilline, if you isolate the vanilline which exists in vanilla, and you use both products, they will have exactly the same composition and the same taste. 657

XQ62. Have they the same origin?

A. If they have the same origin? But if you cannot affirm it, he who sells you the vanilline, if he says what is the real and the false, which is that made by synthesis—

XQ63. I repeat my question. Is it permissible to say that two products which have the same taste in a word two products which are similar from an organolectic point of view, are products manufac-

658 tured in the same manner? I simply ask you to reply by yes or by no, or by an observation?

A. I do not quite see, you know, I do not grasp the question well, I say this: If you use plants like you have used them, these plants give a flavor. That does not vary the flavor. It is not isolated, it exists in the plants, you bring it out by maceration or distillation. When you use these plants—I do not speak of essences nor products by syntheses—plants themselves, natural products, you obtain the same flavor. I am able to say that I have applied the same means, obtained the same result, therefore the composition must be the same.

659 XQ64. On what do you rely?

A. On the taste.

XQ65. You always come back to the taste, and say if there is the taste.

A. Absolutely.

XQ66. And you arrive at this conclusion, that the taste is the only means of analyzing at your disposal.

A. And many others also, for liqueurs.

XQ67. Will you let me know the means at your disposal?

A. There is not any existing to my knowledge, you proportion your essence, you have the com-

660 posed essences, you are not able to isolate them.

XQ68. You have just said that some means of analyzing are at your disposal—

A. I speak of the taste.

XQ69. The taste and many others. I ask: What are these others?

A. Many others?—

XQ70. You say: Many others?

A. No, I say: Myself, I have manufactured a liqueur with plants, the liqueur which I have manufactured with plants has given the same taste as Chartreuse, I say that the product is identical.

XQ71. And in order to affirm that the products identical you only rely simply on the taste which you have perceived? 661

A. Absolutely.

XQ72. You are at the head of the factory of Fourvoirie?

A. Yes, sir, for the manufacturing part.

XQ73. You know the staff, the principal staff of the factory?

A. Yes, sir.

XQ74. Since what period have you been at Fourvoirie? I put the question again to you.

A. Since the 15th of July, 1904.

XQ75. Since the month of July, 1904? 662

A. Yes.

XQ76. Do you know, have you known Mr. Bologne?

A. Bologne, no, sir.

XQ77. Mr. Bologne or Mr. Bourgogne?

A. Ah, Mr. Bourgogne was a representative of the Liquidator?

XQ78. Was a representative of the Liquidator?

A. Yes, sir.

XQ79. Where was he? Where did he live?

A. Where did he live?

XQ80. Where did Mr. Bourgogne live, or where was he domiciled? 663

A. At Saint Laurent.

XQ81. At Saint Laurent du Pont?

A. At Saint Laurent du Pont.

XQ82. Here is a letter which was addressed by Mr. Bourgogne, on the 30th of August, 1904, to Mr. Villars, druggist at Grenoble: "Sir, I beg to in-"form you that I have just taken over the manu-"facture of the liqueurs and elixir of the Grande "Chartreuse at the Factory of Fourvoirie. Con-"sequently I am going to ask you if it will be agree-"able to you to supply me with the articles of drugs

664 "of which we may have need as you did previously "for the Carthusians.

"If in the affirmative, you can send me a price "list of your products, specially those which you "were in the habit of sending them. If you prefer "you can come to Fourvoirie to talk this matter "over with me."

It is a question of Fourvoirie, is it not?

A. Yes, sir.

XQ83. "Awaiting your reply, will you accept, "sir, my sincere salutations,

For the Liquidator of the Congregation of the Carthusians (signed), Bourgogne."

665

By Mr. Kelly: I make an objection to the letter and which has not been identified and has no relation to the case.

By Mr. Bonnet: I will have it identified when the time comes.

XQ83. (Continued): Do you know about this letter?

A. But I desire that you put a question to me on this subject. I do not recall it, but still—

666

(Mr. Bonnet hands the letter to Mr. Tièche, who returns it after having examined it).

I admit that I know it, now, I admit that I know the contents of the letter.

XQ84. You acknowledge it?

A. Yes, sir.

XQ85. That is all I wanted to know. Here is the reply which was made by Mr. Villars:

"To the Representative of the Liquidator of

"the Congregation of the Carthusians, at Four- 667
"voirie.

"Grenoble, September 9th, 1904.

"Absent from Grenoble for a few days I "reply to your letter of August 30th last. My "conscience and my friendship for the Car- "thusian Fathers is an obstacle to any busi- "ness relations between us. Will you accept "sir—etc. Signed: Villars."

(Mr. Bonnet hands the letter to Mr. Tièche, who returns it after having examined same).

What was the position of Mr. Bourgogne at the 668
manufactory of Fourvoirie?

A. The representative of the Liquidator simply.

XQ86. And of what did his duties consist He has every authority, he replaced the Liquidator?

A. The Liquidator always has a substitute there he has his power of attorney there.

XQ87. He was, therefore, the attorney in fact?

A. There is always an attorney-in-fact there.

XQ88. You have said, sir, during the course of the examination you underwent made by Mr. Kelly a while ago, that you use sometimes certain plants dry and other plants green. The plants which you use dry, are they always used dry? 669

A. No, both.

XQ89. And the plants which you use green, are they always used green?

A. Both ways, they are used green and dry.

XQ90. You have also said, if I have a good memory, that there were plants which you must use green?

A. Yes, sir.

XQ91. That is in fact the declaration made by Mr. Cusenier, but one of the witnesses which the other side brought forward in London made a de-

670 claration which I desire to bring to your knowledge. I translate the passage of his declaration under reserve as to the exactitude of the translation. This is what the witness Parker says:

Mr. Kelly questions him, or rather the representative of Mr. Kelly.

"Can you tell me how the herbs are used in the preparation of the liqueurs?"

A. What liqueurs?

Q. In general?

A. They are obtained by an infusion of the herbs in a dry state, suitable proportioned.

671

Q. How are the herbs used, dry or green?

A. Green plants would give very little returns; they are used at different degrees of dessication, according to the desired results and the herbs used.

Q. Are they always used—

By Mr. Kelly: I declare that I have not yet read the deposition of Mr. Parker, and again make all reserves as to the exactitude of the quotation of Mr. Bonnet.

By Mr. Bonnet: I may say that this reserve, I made it myself at the beginning.

672

XQ91 (continued): I would like to know, sir, what you have to reply to these explanations of Mr. Parker?

A. That is the opinion, is it not—I do not know if he is a manufacturer—that is his opinion, but as he does not know our process of manufacture, I am authorized to say that he cannot pretend that he knows how we manufacture the liqueur at the Grande Chartreuse.

XQ92. Do you know if the Carthusians used the plants dry or green?

A. They used them both.

XQ93. How do you know that? 673

A. I know it at least by the experiments which I have made in order to arrive at finding the taste —of the plants, this particular taste, which has permitted me to reconstitute the liqueur. If we take, for instance—you asked just now if the plants could be used in the dry state and in the fresh state. Let us take curaçao, which you know. You have orange peel fresh and dry. You buy the whole orange, you take off the peel, the zest, and you use at the same time the fresh zest and dry zest of the same orange. Thus, I can say that for certain plants they are employed in a fresh state and in the dry state, like the orange in curaçao. 674

XQ94. It results then from what you have just said, that you have only been able to find out by the tasting that the Carthusians used green and dry plants?

A. By the tasting and also by having heard in the region that the Carthusians used the plants in the fresh state. The result which I have obtained has confirmed this for me. In the region it was said that the Carthusians used plants in the fresh state.

XQ95. Do you know that there was a drying room at Fourvoirie? 675

A. Yes, sir.

XQ96. Do you know what this drying room was used for?

A. It could be used, of course, for drying, for storing the plants.

XQ97. Do you know if it was used for drying all the plants?

A. Perhaps to dry a part, and the others to be treated in the green state, as I do it myself.

XQ98. Do you know that in the time of the Carthusian Fathers that those who supplied the Carthusian Fathers have declared that all their plants were used in the dry state?

676 A. I do not know of their assertions, myself, I affirm what I do, what I obtain, and in order to obtain identical analogical results, it is necessary to employ the same processes.

XQ99. You use, you say, the plants of the region?

A. The basis, yes, sir, a part, cultivated plants and a part plants of the Group of the Grande Chartreuse, but all!—It is the main part of the composition of the liqueur; there are others, you know, which do not come from the group of the Grande Chartreuse, of course.

XQ100. Are the plants brought to you, or do
677 you have them gathered?

A. We have the plants gathered in the domain of the Convent, at the Correrie, and at Fourvoirie, the other plants are brought to us by dealers, peasants who gather the plants in the group itself.

XQ101. You assure yourself that the plants which are brought to you are really those which you have need?

A. Are really those of which we have need?

XQ102. Yes; in a word, plants are brought to you, you do not buy all the plants which are brought to you without exercising a control, an inspection?

678 A. I suppose we do not buy the plants which cannot be of any use to us.

XQ103. Are you capable of personally recognizing the plants?

A. A part, yes, sir.

XQ104. As a distiller, you must evidently be a bit of a botanist?

A. Yes, sir.

XQ105. Do you know the plants which the inhabitants of the Dauphiny call, in the language of the region, the "venerelle?"

A. Ven—?

XQ106. "Vènèrelle?" 679

A. No, venerelle—no,

XQ107. The people of the region do not bring you plants under the name of venerelle?

A. Venerelle?—no. Venerelle?—no, I do not know that name. Venerelle?—

XQ108. Yes, sir.

A. No, there is vulnerary, but not venerelle.

XQ109. The people of the region bring it under the name of vulnerary?

A. Yes, sir, vulnerary.

XQ110. You have never heard this word "venerelle" pronounced?

A. Oh, they have names so disfigured that no 680
one attaches any importance to them. It is like maidenhair fern, they have quite a curious name. I have not retained this name in my head.

XQ111. Consequently the people of the region disfigure the names?

A. Sometimes.

XQ112. Would you be able to recognize vulnerary from another plant?

A. The vulnerary? Oh, yes, sir.

XQ113. Is it exact that the flower is yellow?

A. Yes, sir.

XQ114. Large, pretty large?

A. Not very large—the yellow flower. 681

XQ115. Is it single or in a bunch?

A. Ah, the plant is brought to us from the Grançon. I have not gathered it, I have only seen it gathered.

XQ116. But you distinguish it when it is brought to you?

A. Yes, as one would bring you a plant, sometimes the leaves of mint, of balm, of orange flower, that can be seen.

XQ117. Well, is it in bunches? Are the flowers in bunches?

682 A. There is a flower, then the leaf, you know—it is a little plant, with the leaves a little round, a little hairy.

XQ118. Do you know what are called corymbiform plants, like the flower of the pear tree, that is to say, flowers on which the peduncles, although being placed at different points on the stalk, have different lengths, so that all the flowers are in a way on the same level. Is vulnerary under these conditions?

A. To tell you exactly, it would be necessary that I see, by analogical—We use plants which are gathered in the group of the Grande Char-
683 treuse. I know these plants, that is all.

XQ119. I give you a description, which I try to make as scientific as possible, in order that you may, as expert botanist, as a distiller, using plants and who consequently should be able to know them, in order that you may, in a measure, be enabled to enlighten me.

By Mr. Kelly: Objection, the witness never having declared that he was an expert botanist.

By Mr. Bonnet: Distiller using plants.

684 A. Using plants, but from the point of view of the complete definition of a plant, I am not a botanist, I cannot define it as a botanist.

XQ120. In any case, you can tell me this: I am not going to enter into details. The plant which you call vulnerary, it is really vulnerary?

A. The plant, it is the basis—it bears the name of vulnerary of the Carthusians.

XQ121. It bears the name of vulnerary of the Carthusians?

A. Yes, sir.

XQ122. Do you know the scientific name of the vulnerary?

A. It is a kind of hypericum, I think. 685

XQ123. Just so. I think that your opinion is exact, and in any case it is confirmed by an official document. The (mille-pertuis) St. John's wort or hypericum, do you know what is its scientific name?

A. "Mille-pertuis," it has another name.

XQ124. Will you allow me to tell you? Hypericum numullarium.

A. There is another name besides that. I have not the name by memory.

XQ125. There are two kinds of plants?

A. Yes, sir.

XQ126. Two denominations which may be considered as applying to the vulnerary, the vulneraries, which are anthyllis, and the vulneraries which are hypericums, for the anthyllis, or at least the anthyllis which we are now considering, is a red anthyllis. But this hypericum, where does it grow? 686

A. The vulnerary, you mean?

XQ127. Vulnerary or hypericum?

A. The vulnerary of the Carthusians grows especially on the Grand Son, on the mountain of the Grand Son, it is there that they harvest it.

XQ128. Here, sir, is a Prefectoral order concerning the Alpine plants and regulating the gathering of these plants. The subject is edelweiss, artemsia, cyclamen, gentian, hypericum or vulnerary. I want to tell you that you concord with this document, about which we will discuss later. But in your opinion, sir, in what part of the Alps does the hypericum grow? 687

A. It grows on the mountains, you know, at the Grançon, above Chartreuse, the hypericum has a nice perfume, which is much sought after for Chartreuse. Besides, I see that the Carthusians occupied themselves to get some also.

688 XQ129. Here is a work: "La Flore Colorèe," by Correvon. I would like to ask you if the vulnerary which you use, commonly called "venerelle," is really like this—plate 35?

(The witness takes the book and examines the plate indicated).

A. That has a certain similarity—I use it—But the leaves—Yes, it is about that, it is about that kind. Only, I must point out to you that the plant varies in perfume according to the altitude where it grows. I believe it is this plant. I do not
689 know—

By the Commissioner: Have you the reply, Mr. Stenographer?

(The stenographer reads the reply.)

By the Commissioner (to the witness): That is your reply.

XQ130. Where do you have this plant gathered?

A. That plant?

XQ131. Yes.

A. It comes from above the Grançon, in the
690 Chartreuse.

XQ132. Do you think that any exists in any other parts of the Alps than in the group of the Grande Chartreuse?

A. I could not affirm that; the Forestry guards and others have told us no; I could not affirm it to you.

XQ133. I will simply make the remark by the way that the author declares that this plant grows in the Western Alps, the Pyrenees and the rugged places and pastures of the Alpine region. Have you heard, sir, that it is impossible to go gathering flowers and alpine plants in the domain

of the State and in the domain of the parishes of the Chartreuse? I speak of the domain of the State, that is to say, the Demesnial forests. 691

A. There, I think that according to a contract made with the Liquidator, you know, the gathering of the plants is reserved for the Liquidator.

XQ134. In what part, sir?

A. In the domain—how shall I say it—in the demesnial fields, and moreover, instructions have been given by the Prefect to prevent the gathering in the group of the Grande Chartreuse, in the domain of the State.

XQ135. You have told us that there was a contract entered into between the Liquidator and you for the gathering of the plants? 692

A. I think that it is in the lease.

XQ136. This contract grants you the right to gather plants on an extent of land of which the importance—I would like you to let me know the importance?

A. In the demesnial fields, as far as I remember, and in the domain of the State.

XQ137. Does the contract apply to all the domain of the State?

A. If the contract does not apply to all the domain of the State? I think—I could not affirm. The Prefect has given instructions that the gathering be reserved to the lessee, to the Liquidator, in the Grande Chartreuse. 693

XQ138. What is the extent of the land conceded to the Liquidator

A. Oh, I could not tell you exactly. There are a quantity of fields—I could not say precisely.

XQ139. About?

A. I might make a very big mistake. I could not affirm.

XQ140. But it is a concession granted to you, to Mr. Cusenier by the Liquidator; you must

694 therefore know the extent of the rights which have been conferred to you?

A. Between gathering plants which may grow in a domain and working it entirely—there is hay, fields. But we have only the right to gather in these fields the plants which may be useful for the manufacture.

XQ141. May third parties gather these plants in the demesnial forests?

A. I believe that instructions have been given by the Prefect of the Department of the Isère to prevent the gathering of these plants.

XQ142. You speak of instructions, what are
695 these instructions? Is it an "Arrête." (Official orders)?

A. I think so; instructions may have been given to the Forestry guards to draw up reports ("verbaliser") against persons who gathered plants in the domain of the Chartreuse and which were not intended for Fourvoirie.

XQ143. We have heard at a former sitting the Forestry guards, who declared to us that by virtue of a decree of 1896, it was formally forbidden to gather plants, flowers, not only in the domain of the State, but also in the domain
696 of the parishes. The Guards were pretty badly informed, for I have before me a decree of 1900 from the Prefect at Grenoble, which is of the 10th November, 1900, and which exclusively aims at the tearing up of Alpine plants, among which is mentioned hypericum or vulnerary, which forbids this tearing up, the carrying and hawking of these plants. In view of the mistake made by the Guards, I would be glad if you could state precisely the Prefectoral decision.

A. I think that this decision, at least what you ask me, could be stated precisely by the Liquidator, for it is not I who corresponded with the Pre-

fect, it is the Liquidator who is named, and it is he alone, I believe, who asked the Prefect to forbid the gathering of the plants in the group of the Chartreuse. 697

XQ144. And you do not know whether an official order was issued in the meantime, and on what date?

A. I do not know.

XQ145. And you do not know whether satisfaction was given to the Liquidator?

A. I could not say affirmatively, but I think so.

XQ146. You are not sure of it?

A. I am not sure.

XQ147. Do you know whether the Carthusian Fathers used the vulnerary in the manufacture of Chartreuse? 698

A. As I was not present at their manufacture I could not declare that they did use it, I believe so, they have always used it.

XQ148. Do you know whether the Carthusian Fathers used the vulnerary in the manufacture of Chartreuse?

A. I believe so, because those who supplied them previously have continued to bring it to us, there is reason to believe that they must have used it.

XQ149. Have you any other means of proving this fact, that the Carthusians used vulnerary or hypericum for the manufacture of Chartreuse? 699

A. By the use that we make of it ourselves and the offers which have been made to us from the beginning to supply us with the same plants that they supplied to the Carthusians.

XQ150. Do you know if the Carthusians made other products besides Chartreuse?

A. They made the elixir.

XQ151. Did they make nothing else?

A. They made the "Boule d'Acier" and the specific.

700 XQ152. Do you know if vulnerary entered into the composition of the elixir only, or into the composition of Chartreuse and the elixir?

A. That I could not be certain about.

Redirect-interrogatories by Mr. Kelly:

RDQ1. If you have properly understood Mr. Bonnet, he asked you if being able to obtain alcoholatures, type infusions, one could not succeed in making Chartreuse according to an unchangeable formula; I wish to ask you if, to make type infusions, it would not be necessary to proceed by
701 means of "tâtonnement" (grouping in the dark)?

A. Always, always by means of "tâtonnement."

RDQ2. I notice that there is a reply, a question and a reply in the evidence of Mr. Parker that I think has not been quoted by Mr. Bonnet; it is the following question:—he is speaking about herbs—and he asks: Are all the herbs used dry enough to travel—to be packed and travel? The reply is: "Not, generally. If you obtain them as dry as that you will lose the freshness and you will lose the strength." Does not that reply tally with what you have yourself testified to?

702 A. That seems to me to almost agree, yes, that appears to me to agree.

RDQ3. He adds—another question—"And, gen-"erally speaking, do you say that the herbs, that "the plants, must be sufficiently dried to be able to "travel? That the plants should not be sufficiently "dried to permit them to travel?" and the reply: "Yes, I think that would be a general condition." Does that tally with your testimony?

A. That is so, yes, sir.

Recross-interrogatories by Mr. J. Bonnet, representing the plaintiffs: 703

RXQ1. You said just now, sir, to Mr. Kelly, that to manufacture a type infusion one must always proceed by means of "tâtonnement." Have I understood properly?

A. For the use of infusions you prepare, you know—

RXQ2. Its regards the manufacture—(to the stenographer). Will you read over the question put by Mr. Kelly, that there may be no mistake?

A. Since you rectify at each manufacture—

704

By Mr. Bonnet: The reading of the question will cut short all difficulty.

(Stenographer, reads question 1 of the redirect-examination):

A. The infusions, you know, are prepared in definite proportions, but the use of these infusions, it is done by "tâtonnement."

RXQ4. But you acknowledge that the manufacture of type infusions is not done by "tâtonnement" and that it is possible to manufacture infusions having always the same amount of essences? 705

A. No, not at all, not at all. When you have made an infusion, that infusion when it is determinate, you can use in greater or less quantity, that infusion varies altogether.

RXQ5. Allow me—there is a misunderstanding. I am not speaking at this moment of the use of the infusion, I am speaking of the obtaining of the infusion, otherwise called the alcoholature. To obtain this infusion or this type alcoholature, is it necessary to always proceed by "tâtonnement?"

A. Yes.

706 RXQ6. Always?

A. Always, if you wish to obtain something good.

RXQ7. Do you know a method that is called the "Sanglè-Ferrière" method for the proportioning of aromas?

A. Sanglè-Ferrière? No.

RXQ8. I understand now why you reply that it is necessary to always proceed by "tâtonnement" for the manufacture of aromas, for it is precisely this method by which they can be obtained without fail.

A. Between the chemist and the distiller, you
707 know—

RXQ9. As you say, you are posted in all the methods of manufacture—

A. But it happens that you often proportion the essences roughly, there are things which escape you in a plant, always—

RXQ10. Mr. Kelly read to you just now the testimony of Mr. Parker completing a quotation that I made—

A. Yes, sir.

RXQ11. The quotation that I made had for its object to show that certain witnesses, whose competence I do not dispute, had declared that it was
708 necessary to use in the manufacture dry plants—

By Mr. Kelly: I protest, that is not the testimony of Mr. Parker.

By Mr. Bonnet: Mr. Kelly, continuing the quotation, asked you if you are of the same opinion as Mr. Parker concerning the conditions in which the plants should travel. Green plants, if they travelled, might ferment—

A. Certainly, alter.

RXQ13. But if they were previously dried, could 709
they travel?

A. Yes, sir.

RXQ14. Is it necessary that they should reach a certain degree of dessication?

A. But if you want to send away dry plants, you know, to be able to transport them so that they should keep in relatively favorable condition, you dry them. But there is often as much difference between a dry plant as between a dry fruit and a fruit that is not dry, for in the green plant, even employed green, the aroma is not the same as when the plant is dried.

RXQ15. That is your way of looking at it? 710

A. That is my way of looking at it, yes.

RXQ16. Are the aromas of plants changed by dessication?

A. They are not the same.

RXQ17. On what do you base that?

A. On the taste, you know, on the plant itself—you have plants that you cannot use in the fresh state, others that you are obliged to use in the fresh state.

RXQ18. Will you indicate to me the plants which must be used in the fresh state?

A. In Chartreuse?

711

RXQ19. Yes.

A. No, I desire to keep that to myself.

RXQ20. Then it is a secret?

A. No, it is a process of manufacture.

RXQ21. That you cannot make known?

A. No, sir.

LOUIS STEPHANE TIECHE.

712 Session of Thursday, April 5th, 1906, Continued.

(Before Frank H. Mason, Commissioner).

Examination of RÉNÉ TIÈCHE.

RÉNÉ TIÈCHE, of Fourvoirie, Department of the Isère, France, temporarily sojourning in Paris, France, distillery employé, aged twenty-four years, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

713 Direct-interrogatories By Mr. Kelly:

Q1. What is your name?

A. Réné Tièche.

Q2. What is your age?

A. Twenty-four years.

Q3. What is your occupation?

A. Employé at the distillery of Fourvoirie.

Q4. Where do you live?

A. At the present time at Fourvoirie.

Q5. What part of the manufacturing do you attend to? What part of the manufacturing of Chartreuse do you attend to?

714 A. I only attend to Chartreuse under direction of my father.

Q6. What part of the manufactory?

A. Infusions.

Q7. Infusions. Do you use to-day—do you make the infusions to-day from plants in a fresh state or in a dry state?

A. In the making of Chartreuse both kinds of plants are used; in a fresh state and in a dry state.

Q8. And at the present time you use them in a fresh state and in a dry state?

A. The plants are used in a fresh state at the time of the harvest.

Q9. And you use certain plants in a fresh state? 715
A. Yes, sir.
Q10. And the others?
A. In a dry state.

Cross-interrogatories by Mr. J. Bonnet, representing the Plaintiffs:

XQ1. You have said, sir, that you use green plants at the time of the harvest?
A. Yes, sir.
XQ2. And when you use them after the harvest, in what state do you use them?
716
A. In a dry state.
XQ3. You use them in a dry state?
A. Not those plants. We use certain plants in a dry state, others in a fresh state.
XQ4. And the plants you use in a fresh state are always in a fresh state?
A. I cannot answer.
XQ5. You cannot answer?
A. No, sir.
XQ6. You cannot answer the following question: The plants which you use in a fresh state you can only use in a fresh state?
A. We use certain plants in a fresh state, others 717
in a dry state.
XQ7. The plants which you say are used in a fresh state, do you always use them in a fresh state?
A. Certain plants, yes, sir.
XQ8. And the others?
A. Others, we use them in a dry state.
XQ9. I have made a distinction: certain plants, you use them in a dry state, others in a fresh state?
A. Yes.
XQ10. And the plants which you use in the fresh state, you never use them in a dry state?

718 A. No, sir.

XQ11. Why did you tell me just now that you could not reply?

A. It is a question of manufacturing.

XQ12. It is then a secret of manufacturing?

A. No, sir, it is a process.

XQ13. A secret?

A. No, it is a process.

XQ14. Therefore you can let me know what it is?

A. No, sir.

XQ15. Then it is a secret?

A. No, sir.

719 By Mr. Bonnet: Thank you.

Signed by the witness.

Session of Tuesday, April 24th, 1906, at 2 P. M.

Present:—Parties as before.

Examination of GERMAIN ARTHUR MILLON.

720 GERMAIN ARTHUR MILLON, of Paris, France, restaurant keeper, aged fifty-four, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. Pellerin (Secretary of Mr. Kelly, representing the defendant):

Q1. What is your name, sir?

A. Millon.

Q2. Your Christian names?

A. Germain Arthur.

Q3. Your age?

A. 54 years. 721

Q4. What is your profession?

A. Restaurant keeper.

Q5. What is the name of your restaurant?

A. Café de la Paix, Ledoyen, Weber.

Q6. What class of customers do you have at the Café de la Paix, for instance.

A. Very select customers, the best customers, rich customers.

Q7. Could you give me some names of the principal customers you have?

A. Well—I do not know if I am authorized, if I could be authorized to give their names, we are supposed not to know the names of the people who 722 come.

Q8. Do you know the liqueur called Chartreuse?

A. Certainly.

Q9. How many Chartreuses are there at present on the market?

A. At present, I know of two, the one which was made by the Carthusian Fathers at the Grande Chartruese, the one that is made at the same place by the Liquidator and the liqueur of the Carthusian Fathers which is made in Spain.

Q10. You said that there were two on the market, is that absolutely exact? 723

A. We have at this moment, have we not, the liqueur which was made by the Carthusians at the Grande Chartreuse, and the one which has since been made by the Liquidator, on the whole that is only one, since it is the same mark, it is the same thing after all, the Liquidator continues the manufacture of the Carthusians.

Q11. Which of the Chartreuses made in France and in Spain to-day most resembles the Chartreuse formerly made by the Carthusians in France?

A. It is evidently the liqueur made by the Liquidator.

724 Q12. Have you yourself tasted the three Chartreuses?

A. Yes, often, often, yes, often.

Q13. What is your opinion as to the liqueur of the Liquidator.

A. Well, I think it very perceptibly approaches that formerly made by the Carthusians; the only difference that can be found is, that not being as old as the old Chartreuse, it is less blended, it does not adhere so well being of less age, because after all, it is not yet combined with the sugar and the alcohol and the taste that is given to it, like that made several years ago.

725 Q14. On what does the bouquet of the Chartreuse depend?

A. The bouquet evidently depends on the infusion of plants that is used to make it, to make the liqueur.

Q15. What are the duties of a butler in your café?

A. The butler takes the client's orders when they arrive and during the course of their meals, to serve what the clients ask for, and to advise them if necessary about the wines and the liqueurs that the clients wish to take. A great many of the

726 clients know the butler, or not being very decided about what they wish to take, consult the butler as to what they can drink, either as wines or as liqueurs.

Q16. In your restaurant, the Café de la Paix, for instance, when clients ask for Chartreuse, what Chartreuse, what liqueur does the butler give?

A. When they ask for Chartreuse without making any remark to us, we give the Chartreuse of the Liquidator; if on the contrary we have to deal with a customer that we know particularly, who—how shall I put it?—who is a connoisseur, we give him the old Chartreuse because we consider it to be

at the present moment better than the new one considering its age. 727

Q17. The only difference which exists between the ancient Chartreuse made by the Carthusians and that made at present by the Liquidator is a difference of age?

A. That is my opinion.

Q18. Have you ever received complaints from customers about the Chartreuse that you offer at present as being the Chartreuse made at present by the Liquidator?

A. No, I do not know of any, and if any came up, it could only be a complaint caused either by a political or catholic opinion. 728

Q. Have the butlers in your restaurant received orders to sell especially the Chartreuse of the Liquidator when they are asked for a Chartreuse?

A. —Yes, we said—I said to the butlers, that as I considered that the Chartreuse of the Liquidator is better than that of the Carthusians, to give, unless told otherwise by the customer, the Chartreuse of the Liquidator since I consider that it is better than the other.

Q20. Do the butlers taste the liqueurs that they offer in your restaurant?

A. When we have to deal with persons who offer us something new, a new liqueur, a thing we do not know, and as we must give information to customers about the thing we are going to serve them, it is fair that one should judge for one's self the quality of the product, so as to be able to give information to the person who takes it, in case he asks for it. It is only from this standpoint that the butlers, not only are authorized to, but should know the products that they have to serve. 729

Q21. In the evidence which has been given here by MM. Hasse, Boutin and Callerand, butlers at the Café de la Paix, they said that they tasted,

730 drank, smelt, the liqueur that they offered to the customers?

A. Yes, only in the case I have just cited, that is to say when a new product is offered to us we must judge its value, its quality, its taste, before serving it, so as to give information to the customer. When a thing is known to us it is not tasted, unless a complaint is made by a customer. If, for instance, a customer complains of something, well, we see what has been served to the customer, so as to see if this thing should be put aside, or if it should continue to be served.

731 Cross-examination by Mr. Barbancey:

XQ1. Since when do you follow this kind of business, the business of the retail sale of liqueurs?

A. Since 1867.

XQ2. Consequently, you are well acquainted with what is called "liqueurs de marque?"

A. Yes.

XQ3. What was the liqueur that was formerly sold on the French market under the name of Chartreuse?

A. It was evidently the liqueur made by the
732 Carthusians at the Grande Chartreuse.

XQ4. You know consequently that it was the Carthusians that made it?

A. Yes.

XQ5. Yes, you did, did you not?

A. Yes.

XQ6. You knew it for a long time?

A. As soon as a rather young child sees Chartreuse he knows naturally that this Chartruese is made at the Grande Chartreuse.

XQ7. By the Carthusians?

A. By the Carthusians.

XQ8. Do you think that you were the only person knowing that? 783

A. Everybody knows it.

XQ9. It was of public notoriety?

A. Absolutely.

XQ10. That the Carthusians made the Chartreuse?

A. Absolutely.

XQ11. This notoriety of the monks as manufacturers was therefore universal?

A. I do not understand.

XQ12. This notoriety of the monks as manufacturers was therefore universal?

A. Exactly. 784

XQ13. So that when clients asked for a Chartreuse they knew that they were going to be served a liqueur made by the Carthusian monks?

A. Exactly.

XQ14. Since how long have the Carthusians put on the market the liqueur made by them?

A. That I cannot say exactly, but when I commenced the Chartreuse already existed. I do not know if it has existed for a long time I could not say when they commenced.

XQ15. You know that the public liked this liqueur very much because it was made by the monks? 785

A. I cannot say if they liked it because it was made by the monks, but they liked it because it has a particular taste, because it pleased by its taste and its bouquet. I do not know—I think, I am certain—I can say for a certain fact that they did not like this liqueur because it was made by the monks, but for its own qualities.

XQ16. Nevertheless, they knew that it was made by the Carthusians?

A. They did not care—

XQ17. They knew it?

736 A. They did not like it because it was made by the monks, but because the quality, the taste, pleased them.

XQ18. For the public the word Chartreuse was a liqueur made by the Carthusians?

A. Exactly.

XQ19. Is it not since about fifty years that the Carthusians have put their liqueur on the market? You commenced this business in 1867, according to what you told me, but when you commenced, you knew, did you not, that the liqueur existed since a number of years?

737 A. I know that it existed, I do not know how long.

XQ20. It was a liqueur that was appreciated?

A. Yes, very much appreciated.

XQ21. A great deal of it used to be sold?

A. A great deal of it was always sold.

XQ22. It was universally known, everybody knows it?

A. Exactly.

M. Barbancey: Monsieur le Consul, would you give me the bottles that have been presented to the witness, the bottles of the Li-

738 quidator and of the Carthusians?

XQ23. Are you well acquainted with the bottles of liqueur, and the marks under which the Carthusians sold their liqueur, in France, for such a long time?

A. I think that the mark has never varied.

XQ24. You know their bottles well, which have never varied, as you put it?

A. Yes, I have always seen the same label.

XQ25. Is it really those bottles?

A. Exactly, it is really that label, looking at the top only, it is really this.

XQ26. Of course, the label at the bottom is simply an annex for foreign countries? 739

A. It is really this.

XQ27. It is really the bottle also?

A. It is really the bottle also, nevertheless formerly, this, which is engraved, was embossed.

XQ28 Well, it was the same mark?

A. Yes, exactly the same mark.

The Consul: Mr. Stenographer, you remark that the bottle is marked Exhibit B, for identification.

Mr. Kelly: The bottle has already been produced and marked Exhibit B. 740

XQ29. In what bottles and under what marks does the Liquidator now sell the liqueur which he makes and which he names Chartreuse?

A. In the same bottles and under the same labels.

XQ30. Good. These bottles and these marks—

A. Are absolutely identical.

XQ31. Are identical. Is there not nevertheless a slight difference?

A. Yes, there is the difference—which was at once perceived—in the name of the printer. 741

XQ32. Yes. You think that it is easy to perceive it, this difference.

A. The difference in the name of the printer?

XQ33. Yes?

A. Oh, yes, everybody knows that the name "Allier" does not figure on the new labels.

XQ34. Everybody knows it?

A. Everybody who is in the trade or who—well, who is mixed up with our kind of business?

XQ35. Those who buy to resell?

A. Many clients also.

XQ36. Could you cite some who know it?

742 A. As I said a moment ago, you see, at our place we have to do with several hundred of clients a day—well, we have among them many persons we know by sight, whose names we do not know, and besides if I did know these names I would not consider myself authorized to tell them.

XQ37. I do not insist, but here is a bottle and a mark under the label of the Liquidator, you—

A. Absolutely, this is a liqueur made by the Liquidator.

XQ38. What is there at the bottom of the label?

A. There is "Imprimerie Lithographie" at the bottom of the label, "à Grenoble."

743 XQ39. And in big letters?

A. No, in small letters.

XQ40. Quite small?

A. Of the same size as the former label.

XQ41. Of the same size as the former labels, of the same shape?

A. Of the same shape.

XQ42. And placed at the same place?

A. At the same place.

(The witness has before his eyes the bottle marked Exhibit F.)

744

XQ43. When a client asks for a liqueur, is the bottle given to him for him to help himself?

A. Yes, when people have finished their meal, we put several kinds of bottles of liqueur on the table for them, and the client chooses the one he wants or the client says to the butler "What must I drink?"

XQ44. Yes, but do you give him the bottle for him to help himself?

A. Exactly.

XQ45. He helps himself?

A. The client helps himself, most of the time, or

if he has himself served it is by the butler or the major-domo, who leave him the bottle. 745

XQ46. Also in the café?

A. No, at the café the clients do not take things the same way as at the restaurant. A client comes, he is asked what he wants to take, if it is a liqueur it is poured into the glass for him and the bottle is taken away.

XQ47. Consequently the waiter keeps in his hands the bottle he has to pour out from?

A. Exactly but there again—

XQ48. Under those conditions, since the waiter keeps in his hands the bottle with which he poured out the liqueur for the client, is it possible for the 746 client to see the little notice which you have just spoken of put at the bottom of the label, written in very fine letters, almost illegible, one might say?

A. When in the café—

XQ49. I ask you to answer; is it possible for a client to see on the label of the bottle held in hands by the waiter, the notice which we have spoken of, written in small letters almost illegible?

A. It is possible for the client to see it.

XQ50. Do you think that he sees it? I appeal to your good faith and ask you: do you think that he can see it? 747

A. Exactly. The butler pours out the bottle for the client, fills his glass, the client can see at the moment when the butler pours out, it is nobody's interest to hide it, the client can judge of the inscription perfectly. Besides in a general way not a single client who asks for a glass of Chartreuse would let a glass of the new one be poured out for him, if he intended to take the old one.

XQ51. But the label is quite different from the new one?

A. No, it is like it.

XQ52. The one of Tarragona?

748 A. No, I speak of the Chartreuse of the Liquidator and of that of the Carthusians. Not one person coming to the Café to ask for a glass of Chartreuse would allow a glass of the new one to be poured out for him if he intended to take the old one. He would first ask the waiter. Is that the old one; and on the waiter's reply, many people would say: Show me the label, because many people taking Chartreuse know now since some months—

XQ53. Since some months—

A. Since some months that the difference of the label exists in the name of the printer.

749 XQ54. Have you drawn the attention of your clients to this difference?

A. That became known by the force of circumstances. As soon as the Chartreuse of the Liquidator was put on sale, the difference of the label was immediately perceived, and it was remarked upon by one to the other. It was like a train of gun-powder, at Paris things are known very quickly.

XQ55. Well, it is nevertheless true that at the café, and it is there probably that you sell the most Chartreuse—

750 A. No, it is after meals that most is taken.

XQ56. But at the café you sell some?

A. Less than at the end of meals.

XQ57. I do not want to enter into details, to ask you to let me know the number of clients you have a day, but I suppose that you have more consumers at the café, in proportion, than at the restaurant?

A. Exactly, but at the café as one comes to the café between meals, one drinks rather aperients, beer than liqueurs.

XQ58. Do not people go there after meals also above all at Paris, is it not in fact the custom?

A. With our style of customers—our class of customers after meals take coffee and liqueurs, and when they go to the café between meals they take other things. There are exceptions to everything, sometimes also they take Chartreuse, but Chartreuse is taken rather after meals than between meals. 517

XQ59. Good. It is nevertheless ascertained that at the café when a customer asks for Chartreuse the waiter pours him out Chartreuse and keeps the bottle in his hands, that the bottle is not put into the customer's hands?

A. I wish to explain my thought; as a general rule when a customer at the café asks for Chartreuse he is asked if he wants the new or the old. 752

XQ60. You never ask him if he wants the one made by the Carthusians at Tarragona?

A. He is asked if he wants the old or the new, considering the difference of price, so as be sure.

XQ61. Then you have not got the liqueur of Tarragona?

A. Some of it is taken—

XQ62. You do not offer it?

A. We do not offer it.

XQ63. You have a reason for not offering it?

A. It is because I consider it as being not so good. 753

XQ64. Have you given orders to your staff to warn your customers who ask for Chartreuse that the Chartreuse that you pour out for them is not the Chartreuse formerly made in France by the Carthusians, but the liqueur made in France by the Liquidator?

A. Everybody knows, there is no need for it.

XQ65. You have not given these instructions?

A. No.

XQ66. So that when a customer asks for Char-

754 treuse, you pour him out the liqueur of the Liquidator?

A. If we thought for a minute that the customers knew nothing about it, we would warn them, but as it is of public notoriety, it is not necessary to warn them. But if we thought that the customers did not know this detail, we would warn them.

XQ67. In any case you have not given these instructions to your employees?

A. No.

XQ68. Do you think that the customers can believe that the Chartreuse liqueur thus poured out of bottles identical with those that the Carthusians
755 formerly employed and which were in the world's commerce since more than 50 years, is still the same liqueur formerly made by the Carthusians.

A. No, everybody knows that the Carthusians are no longer at Fourvoirie and that the Chartreuse is continued by the Liquidator.

XQ69. You yourself, sir, you have a stock of the old Chartreuse made by the Carthusians?

A. Yes, and it is for that, that at the café for instance we ask the customer if he wants the old or the new, and that at the restaurant, when we have to deal with customers who are more con-
756 noisseurs, to whom it is of no importance to spend more, we give them the old one, because we consider that, being older, it is more blended, and that they will prefer it.

XQ70. You said a moment ago that you draw the attention of customers when you may be in doubt as to whether they know that the liqueur was not the same, then you do not do it generally, you do not draw the customer's attention to it?

A. The customer with whom we have to deal, who, we think, will prefer the old one because it is better and dearer, knows very well that we give him what there is best to drink. If we thought that

he had a doubt about what we are going to give him, we would warn him, but in conversation those things— 757

XQ71. It is not precisely my question. I ask you if you draw the attention of your customers, and if you have ever drawn the attention of your customers to this fact that the liqueur which is actually sold in the bottles and under the marks which for more than fifty years were known as being made by the Carthusians and designated the liqueur made by the Carthusians; in these bottles and under these marks there was no longer a liqueur made by the Carthusian Fathers, but by the Liquidator? Such is my question. 758

Mr. Kelly: I confess that I do not understand the question.

Mr. Barbancey: It is very simple, sir.

A. Will you allow me to—

Mr. Barbancey: Did you understand it?

The Witness: Yes.

Mr. Kelly to the stenographer: Will you re-read it?

(The stenographer re-reads question No. 71.) 759

Mr. Kelly: I do not understand it.

Mr. Barbancey: Made by the Liquidator—

Mr. Kelly: I object to the following part of this question, "and designated a liqueur made by the Carthusians—in these bottles and under these marks there was no longer a liqueur made by the Carthusians, but by the Liquidator," as containing an inaccuracy.

Mr. Barbancey: Might I ask you to specify what inaccuracy?

Mr. Kelly: I say that there was nothing on

760 the mark which designated that the liqueur was made by the Carthusian Fathers, nothing, in the old mark designated that the Chartreuse was made by the Carthusian Fathers.

Mr. Barbancey: The witness has already acknowledged that these bottles and these marks, for the public, signified that the liqueur contained therein was the liqueur of the Carthusian Fathers.

Mr. Kelly: I have not to argue, I wish to state my objection.

761 The Witness: I do not understand very well the reply that you are making me give, I said that in France—

Mr. Barbancey: You have not got to explain your testimony, and if I fall into an inaccuracy—

(At the request of M. Barbancey, the stenographer re-reads the questions and replies from Question 3 to Question 12 of the cross-examination.)

Mr. Barbancey: Does that suffice you, Mr. Kelly?

762 Mr. Kelly: I did not ask to have the testimony re-read, I stated an objection which it is my duty to state. We are losing time uselessly. I ask for the continuation of the examination.

Mr. Barbancey: I repeat my last question.

XQ72. I ask if you draw the attention of your customers and if you have ever drawn the attention of your customers to this fact that the liqueur that is at present sold in the bottles and under the marks that for more than fifty years were known as being made by the Carthusian Fathers and designated the liqueur made by the Carthusians; in these bottles

and under those marks there was no longer a liqueur made by the Carthusian Fathers but by the Liquidator? 763

A. I have certainly—I have, not certainly, but often draw the attention of my customers in as much as I have several times said to them: Taste this new Chartreuse made by the Liquidator, it resembles the old one exactly.

XQ73. What is about the proportion of customers whose attention you have thus drawn with relation to your ordinary customers?

A. Twenty per cent.

XQ74. Twenty per cent?

A. Yes. 764

XQ75. Does the liqueur of the Liquidator resemble or does it not resemble the liqueur made formerly by the Carthusians?

A. But it resembles it in my opinion completely.

XQ76. There is no difference?

A. I do not find—difference of age, because the old one is more blended, having had more time to mix and to take the taste, this mellow taste, which is acquired in ageing.

XQ77. How do you know that this difference which you remark is due to age?

A. We have at this moment some Chartreuse made by the Carthusian Fathers before their departure, a little before their departure, what is called current Chartreuse. We have on the other hand Chartreuse of years like 1877 since the Chartreuse marked 1877 is better than the Chartreuse made—which is currently bought. I conclude from it that it must improve in ageing. 765

XQ78. You remark a difference which you attribute simply to age. Is this manner of comparing liqueurs very certain, and to compare two liqueurs is it not necessary to have precisely two liqueurs of the same age, to know if they are really alike?

766 A. Well, but if you take to-day a glass of old Chartreuse with the Chartreuse of the Liquidator, one would have to be a very good taster, to recognize it, although it is of different age. An ordinary person would not recognize it.

XQ79. An ordinary person would not recognize it?

A. Absolutely.

XQ80. Then the liqueur of the Liquidator offers no difference with that of the Carthusian Fathers made formerly?

A. I find no difference in it.

767 XQ81. Nevertheless, you said a moment ago that there was one, which is due to age—

Mr. Kelly: You can continue like that until to-morrow.

Mr. Barbancey: Mr. Kelly, I beg of you, let me question the witness.

Mr. Pellerin: Let the witness speak.

A. If you have a glass of old Chartreuse and a glass of new Chartreuse, I repeat, an ordinary person would not recognize them. When one is accustomed to taste and to judge one will be aware, be-
768 tween the two, of a difference of mellowness, evidently due to the difference of age; since the Chartreuse, the last Chartreuse of the Carthusian Father my Chartreuse marked 1877 since the Chartreuse of 1877 is more mellow than the last made, evidently age has rendered it better. That is so true, that all of us, in our houses, we buy of Chartreuse as of other liqueurs, more than we need, so as to let it grow old.

XQ82. To sum up, there is a difference between the old Chartreuse made by the Carthusian Fathers and the liqueur of the Liquidator, and you at-

tribute this difference to the simple question of age? 769

A. Exactly.

XQ83. Do you know the liqueur that the Carthusian Fathers make at present at Tarragona?

A. I have tasted it also.

XQ84. Does it resemble or does it not resemble the old liqueur that they made in France?

A. Not at all.

XQ85. What difference do you find?

A. The bouquet is not the same, and the alcohol is much less good, the alcohol employed is much less good.

XQ86. Then you recognize what the alcohol is 770 that they employ?

A. Evidently I do not know the alcohol that they employ, but one recognizes the taste, one perceives that it is not good since there is a bad taste in the liqueur. One recognizes it very well, one cannot deceive one's self.

XQ87. Do you not know that the Carthusian Fathers affirm that they employ identically the same plants as they formerly employed in France, and that they make the liqueur by the same process?

A. It is the role of a manufacturer to say that he 771 does the best possible, but it is the role of the consumer to say if it is true.

XQ88. I ask you if you know that they affirm that they employ identically the same plants that they formerly employed in France and that they make the liqueur by the same process?

A. Yes, in the advertisements that they make—in their advertisements, they say it.

XQ89. Do you not know that their assertion is alike corroborated by other testimonies, by other assertions, by those who supply the plants who formerly supplied them?

A. I do not know.

772 XQ90. In your opinion, you who after all belong to the trade, a liqueur which is made by the same manufacturers and by the same secret process and with the same products must it not necessarily be the same always, or resemble itself more than that made by another manufacturer who has confessed to not knowing the secret, the process of making of the old manufacturer and does not even know what are the plants employed in the making of the primitive liqueur by the old manufacturer?

A. There cannot be a secret in the making.

XQ91. That is not my question. I ask you if in your opinion, a liqueur which is made by the same
773 makers—

A. Yes.

XQ92. And by the same process—

A. Yes.

XQ93. —secret process, and with the same products, must not necessarily be always the same, or at least resemble itself more than the liqueur made by another manufacturer who has confessed to not knowing the secret, of the fabrication of the old manufacturer, and does not even know what are the plants employed in the fabrication of the primitive liqueur by the old manufacturer?

774

Mr. Kelly: I object; there is an inaccurracy as regards the word "secret" it is not proved that there is a secret in the fabrication.

Mr. Barbancey: I reply to this that in any case M. Cusenier has declared that he did not know if he knew the process of the Carthusian Fathers.

Mr. Kelly: I maintain my objection.

Mr. Barbancey: I maintain my reply.

A. To my way of thinking, if the Carthusian Fathers had at Tarragona the same elements as at

the Grande Chartreuse, they would make the same thing, but since they do not make in the same way, that their products are less good, it is because they have not the same elements. 775

XQ94. It is your opinion?

A. It is my opinion.

XQ95. But this liqueur made by the same manufacturer, by the same process, with the same products, should evidently resemble more the old liqueur made by the same manufacturer than that made by anybody at all?

A. It "should"—

XQ96. Mr. Cusenier, questioned on the point of knowing whether he knew the secret of manufacture said that he did know it. 776

A. I have not the honor of knowing Mr. Cusenier —I know him as one knows by sight at Paris.

XQ97. I do not ask you if you know him: these are the premises of a question.

Mr. Tièche, manager of the factory of Mr. Cusenier, who was asked if he knew that a certain plant was or was not employed by the Carthusian Fathers replied that he did not know, that in the country it was affirmed that the Carthusians employed it, but the proof has always been wanting.

Does it appear to you admissible, under these conditions, that the liqueur made by the Liquidator or his manufacturer, Mr. Cusenier, when the former does not know the formula nor the plants employed, can so resemble the old liqueur made by the Carthusian Fathers that one can get to mistake one for the other? 777

Mr. Kelly: I object, I think that here again there is an inaccuracy. I do not think that Mr. Cusenier said that he did not know the secret of the Carthusian Fathers.

778 Mr. Barbancey: The process of the Carthusian Fathers.

Mr. Kelly: I think that he proposed to put the two liqueurs opposite one another, so as to decide.

Mr. Barbancey: I am going to read the evidence of Mr. Cusenier or at least read a passage of the evidence of Mr. Cusenier. "The Liquidator, in order to help you in the manufacture—"

The Consul: What is the number of the question?

779 Mr. Barbancey: Question No. 21 (reads Qs. 21 to 28, and answers of Mr. Cusenier).

Mr. Kelly: I remark that Mr. Cusenier did not declare that he did not know the secret of the Carthusians, the secret or the formula of the Carthusians.

Mr. Barbancey: I think that he declared that he did not know if he knew the formula of the Carthusians. "I do not know" signifies that.

Mr. Kelly: His testimony speaks for itself.

Mr. Barbancey: We also abide by it. I maintain the question of a moment ago.

780 Mr. Kelly: I maintain my objection.

(The stenographer re-reads the question which precedes No. 97.)

A. It is not my affair to know, and I have not the time to seek, nor have I means either, how the Carthusian Fathers and Mr. Cusenier manufacture but we are accustomed in our trade to judge things only by the result. Well, I declare that the Chartreuse made by the Liquidator and that made formerly by the Carthusian Fathers is—how should I put it—cannot be recognized—no—in short I mean by that that I could not recognize it.

XQ98. You could not recognize it? 781

A. You could not recognize it.

XQ99. Are you an expert taster?

A. I am accustomed to taste and to judge of the value of things.

XQ100. Then, in spite of what I have said to you, you maintain that the liqueur of the Liquidator is identical with the old liqueur made by the Carthusian Fathers?

A. Exactly.

XQ101. There is no difference?

A. Only the little point which I attribute to age.

XQ102. Which you attribute to age. Do you admit, given what I have just said to you a moment 782
ago, about the secret of manufacture and about the plants employed, given that the Liquidator ignores the formula and does not know what the plants are, do you admit that his liqueur resembles the old liqueur of the Carthusians more than that which the Carthusians make at the present moment, that they declare they make with the same plants and by the same process?

A. I repeat to you that the liqueur made by the Liquidator is the old one exactly, whilst that made by the Carthusian Fathers does not at all resemble the old one. 783

XQ103. What difference is there between them?

A. I am not a distiller, I cannot explain it, there is a difference of taste, but I cannot explain it otherwise than that the taste of the liqueur of Tarragona does not resemble the old one and the alcohol employed is less good to my way of thinking, because a bad taste is found in it.

Mr. Kelly: Will you tell me if this is to continue long, for I have another witness who is very busy.

M. Barbancey: I think for ten minutes.

784 XQ104. Would you characterize for me the impression on the taste that each of the three liqueurs produces? First the old one made by the Carthusian Fathers in France, what impression does this liqueur produce on the taste?

A. I am not a scientific man, it is an impression —I can with difficulty explain my impression. The liqueur is good, I find the old Chartreuse very good, very agreeable to the taste, and very homogeneous as to the bouquet.

XQ105. And what is the impression, sir?

A. Well, the impression of a thing agreeable to the palate, I cannot—

785 XQ106. Is it sweeter, stronger, more sugared, more sirupy?

A. Well, the old Chartreuse—has the same taste and is neither more or less sugared than the new one, whilst the liqueur made at Tarragona has a more disagreeable taste both as to bouquet and as to alcohol.

XQ107. You have taken the word "sugared" as a term of comparison between the old Chartreuse and that of the Liquidator. Is that of Tarragona more or less "sugared" than the old one and than that of the Liquidator?

786 A. From the point of view of the degree of sugar and of alcohol, I have not judged of that.

XQ109. Does it leave the impression on the taste of being more sugared or less sugared?

M. Pellerin: Will you allow the witness to reply, you interrupt him constantly.

A. It is difficult for me to explain, there are things which one feels, which one does not explain easily. I feel a taste, I experience a satisfaction of the palate, but to explain it, it is not easy, it is a question of appreciation.

XQ110. Good, sir, but you do not hesitate to say that the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator are equally sugared. How is it that to my precise question whether the liqueur of Tarragona is more sugared or less sugared than the old liqueur of the Carthusian Fathers or the liqueur of the Liquidator, you do not reply? 787

A. They are sugared as they need to be, it is necessary that the sugar, the alcohol and—

XQ111. That is not the question, sir.

A. I do not understand.

XQ112. The examination will last perhaps. if you do not reply to my question. 788

(To the stenographer: Will you repeat the reply of the witness?)

M. Millon: I am not a member of the Academy of Science; there are things which I cannot define.

(The stenographer re-reads the reply to question 106.)

"Well, the old Chartreuse—has the same taste and is neither more or less sugared than the new one, whilst the liqueur made at Tarragona has a more disagreeable taste both as to the bouquet and as to the alcohol." 789

XQ113. You told me that the liqueur of the Liquidator was neither more nor less sugared than the old one, I ask you if the liqueur of Tarragona is more or less sugared than the old liqueur and than the liqueur of the Liquidator?

A. For that one would have to judge of the degree of sugar that there is in it. I reply that to the taste that which distinguishes it, is the bouquet, the taste, that which one feels. It seems to me that the liqueur made at Tarragona by the Carthusian Fathers does not at all resemble the old liqueur

790 that they made as to the bouquet and as to the taste of the alcohol. That is my way of thinking; now whether it is more or less sugared, I do not know.

XQ114. You do not know?

A. No.

XQ115. You do not know if the liqueur of Tarragona is more or less sugared than the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator?

A. I do not know.

XQ116. And you do not know it by comparison between the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator?

791 A. I repeat to you that as to taste the liqueur of the Liquidator and the old liqueur of the Carthusian Fathers are not distinguishable.

XQ117. I shall not insist further since I cannot succeed.

A. I do not understand your idea.

XQ118. My idea is very simple; I cannot enunciate it in a clearer manner. You have declared that the liqueur of the Liquidator was neither more nor less sugared than the old liqueur of the Carthusian Fathers?

A. Yes.

792 XQ119. I ask you if the liqueur of Tarragona is more or less sugared than the old liqueur of the Carthusian Fathers or the liqueur of the Liquidator, the question is simple.

A. Well, but I do not find the liqueur of Tarragona more or less sugared than the others, I tell you that it is distinguished from the others by its taste, by its bouquet, and by its taste of alcohol, but I do not think by the sugar.

XQ120. You do not know if it is more or less sugared?

A. I do not know.

XQ121. Do you know if the liqueur of Tarragona

is more or less alcoholized than the liqueur of the Liquidator or the old liqueur of the Carthusian Fathers? 793

A. The degree ought to be the same.

XQ122. It is, consequently, not more alcoholized?

A. Yes, but an alcohol which weighs 43° and which is good, with an alcohol which weighs 43° and which is bad, it is not the same taste.

XQ123. It is not more alcoholized?

A. I did not say it was more alcoholized.

XQ124. I ask you: is it more or less?

A. I said that the taste of the alcohol was less good, I do not know if it is more or less alcoholized than the old liqueur or the liqueur of the Liquidator. 794

XQ125. It is not stronger in alcohol?

A. I do not think so.

XQ126. Nevertheless your waiters whom you entrust with tasting, said so; Mr. Gallerand declared that the liqueur of Tarragona was more alcoholized.

A. It is a result of appreciation.

QX127. Now another of your waiters, Mr. Boutin, declared that the liqueur of Tarragona, the new liqueur of the Carthusian Fathers, was more siruppy?

A. It is again a question of appreciation, that depends on cases. 795

XQ126. You have just said that you do not know if it is more or less sugared, I simply call attention to the fact that in your establishment opinion is divided?

A. When two people taste the same thing, they are not of the same opinion.

XQ129. I note that.

A. It is like in front of a picture, one will find it beautiful, the other ugly.

XQ130. Is it not a constant habit with the wait-

796 ers to present themselves before the customer at the end of the meal, with a certain number of bottles of liqueur?

A. Exactly. When a customer has finished lunching or dining, liqueurs are put on the table for him, and the customer chooses. If he desires others he asks for them and they are brought to him.

XQ131. Before the disputes which arose between the Liquidator and the Carthusian Fathers, was it not customary to offer to the customers simultaneously fine champagne, kummel and Chartreuse?

A. Before the disputes?

797 XQ132. Yes, before the departure of the Carthusian Fathers, before the law suits which have been instituted between the Carthusian Fathers and the Liquidator?

A. The custom was as at present to put several sorts of liqueurs, so that the customer might choose.

XQ133. I put the thing more precisely: I ask you if it was customary to offer to the customers simultaneously, at the same time fine champagne, kummel and Chartreuse? One does not come with twenty bottles.

A. Four or five are put, there is no fixed habit. Each house settled it as it liked, it put on the table

798 the liqueurs that it judged suitable.

XQ134. In your house particularly was it not customary before the departure of the Carthusians, for the waiter to come at the end of the meal to offer liqueurs to the customers, and were not the liqueurs which the waiter came to offer thus to the customers, simply fine champagne, kummel and Chartreuse?

A. The custom has not changed; it is at present what it was five years ago.

XQ135. I ask you if it is the custom?

A. I do not understand your question. You ques-

tion a waiter, this waiter replies something to you, 799
and you draw from that a rule; the rules does not exist.

XQ136. I question the proprietor of the Café de la Paix and I ask him if in his house, at such and such a time, it was customary, at the end of the meal, for the waiter, in his house, to come to offer liqueurs, and whether these liqueurs were not fine champagne, kummel and Chartreuse. Were not those the three liqueurs which it was customary to offer to the customers?

A. The custom has not changed, when the customers have finished lunching or dining, they are 800
given fine champagne, curaçao, kummel—and often a customer asks for a cherry brandy, or aniseed.

XQ137. Then it was not only these three liqueurs, it was five or six indifferently?

A. Not at all—

XQ138. I put it more precisely still, I go further. At present, in your establishment, your own, is it customary or is it not customary up to this day—I do not say tomorrow, it might perhaps change—to have presented by the waiter fine champagne, kummel, sometimes, curaçao, but nearly never Chartreuse?

A. No, there is no fixed rule. 801

XQ139. Generally it is not done thus, Chartreuse is always brought to your customers?

A. Chartreuse is brought when it is thought that the customer will drink some.

XQ140. Do you often think it? That is the question?

A. According to the inspiration of the moment when the customer finishes dining, according to his habits, what it is thought that he will drink.

XQ141. You speak of habits, you allude to customers that you know?

A. There is no rule.

802 XQ142. Up to this day?

A. We offer some when we think that the customer will drink some.

XQ143. Do you often offer it?

A. When it comes into our mind.

XQ144. I ask you if it is often that that comes into your mind?

A. Perhaps three-quarters of the time.

XQ145. Three-quarters of the time. It is a precise indication. Are you not directly or indirectly interested in the commercial business of Mr. Cusenier?

803 A. By no means.

XQ146. You are not directly nor indirectly interested in the business of the Chartreuse made by Mr. Cusenier?

A. By no means.

XQ147. You are not a shareholder of the Société Cusenier?

A. No.

XQ148. At the time of the last general meeting of this society, did you not deposit stock in order to be able to be present or to have yourself represented at the general meeting?

A. Not at all.

804 GERMAIN ARTHUR MILLON.

Session of Tuesday, April 24th, 1906, continued. 805

Examination of MR. JACQUES RÉGLI.

JACQUES RÉGLI, of Paris, France, aged forty-three years, hotel keeper, having been produced, sworn and examined on the part of the defendants, doth depose and say as follows:

Direct-interrogatories by Mr. Pellerin, secretary of Mr. E. Kelly, representing the defendant:

Q1. What is your name, sir?

A. Régli, Jacques. 806

Q2. What is your age?

A. 43 years.

Q3. What is your profession?

A. Hotel keeper.

Q4. What is the name of the hotel of which you are the proprietor?

A. I manage the Grand Hotel.

Q5. What kind of customers have you at the Grand Hotel? Could you quote me the names of a few of your customers? A. Oh, we have a very cosmopolitan business.

Q6. Do you know Chartreuse? 807

A. Yes.

Q7. How many Chartreuses are there at the present time on the market?

A. Two.

Q8. Will you tell me what are these two Chartreuses?

A. The new and the old, I do not know of any others.

Q9. Is it to your knowledge that there is another Chartreuse manufactured by the Carthusian Fathers at Tarragona?

A. Oh, yes, the liqueur of the Pères Chartreux.

808 Q8. Which of the Chartreuses manufactured in France and in Spain today most resembles the Chartreuse manufactured formerly by the Carthusian Fathers in France?

A. You mean to say which of the Chartreuses—

Q11. I repeat the question: Which of the two Chartreuses manufactured in France today by the Liquidator, and in Spain, at Tarragona, by the Carthusian Fathers, most resembles the Chartreuse formerly manufactured by the Carthusian Fathers?

A. It is that of the Liquidator.

Q12. Have you tasted the three Chartreuses?

809 A. Yes, several times.

Cross-interrogatories by Mr. Barbancey, secretary of Mr. J. Bonnet, representing the plaintiffs:

XQ1. Since how long have you followed this kind of business of selling liqueurs by retail to your customers?

A. For a long time, since the firm, the Grand Hotel exists, wines and spirits have been sold there for quite 25 years, if not more.

XQ2. You are well acquainted consequently, what one calls liqueurs "de marque"?

810 A. Quite so.

XQ3. What was the liqueur that was formerly sold on the French market under the name of "Chartreuse"? It was the Chartreuse of the Carthusian Fathers?

A. Evidently.

XQ4. You therefore knew, consequently, that this liqueur was manufactured by the Carthusian Fathers?

A. Yes, yes.

XQ5. And you knew the bottles and the marks in which and under which they sold their liqueur?

A. Perfectly.

XQ6. The sight of these bottles and the sight of these labels evidently awakened in your mind the idea of the manufacturers, and you said: It is the liqueur made by the Carthusian Fathers? 811

A. Yes, yes.

XQ7. Do you think you were the only one to know that?

A. That, I do not know, you know. The liqueur of the Carthusian Fathers was presented to us, which we sold as we sell the new Chartreuse manufactured by the Liquidator, and naturally we business men, we undertook some experiments to know which of the two might be the better. It is a question of pride in business which develops, a question rather of awaking curiosity to see which of the two Chartreuses might be the better. 812

XQ8. I have let you talk, but you have not answered my question. You told me that you knew that the Chartreuse was manufactured by the Carthusian Fathers?

A. I beg pardon, sir, I knew very well that the Chartreuse was manufactured by the Liquidator.

XQ9. Not the new, the old?

A. Ah, that, I knew it, as I have been there, to the Chartreuse.

XQ10. You have then told me that you knew that the liqueur, which was sold in France under the name of Chartreuse before 1903 was the liqueur manufactured by the Carthusian Fathers? 813

A. Yes.

XQ11. And that the bottles and the marks in which and under which the Carthusian Fathers delivered this Chartreuse awakened forcibly in your mind the idea that the liqueur which was in those bottles was made by the Carthusian Fathers?

A. I never thought of that, sir; I have been to the Chartreuse myself, I know that the Chartreuse was

814 manufactured at Fourvoirie; I never troubled myself to know whether the Carthusians manufactured it, as I have seen them.

XQ12. You have seen it manufactured by them?

A. I tell you, I have been to Fourvoirie and to the Convent also; I have never known that the Chartreuse was manufactured by any one else than the Carthusian Fathers?

XQ13. My question just now was this: You knew it, others knew it besides you?

A. Evidently, there was no doubt about it.

XQ14. It was of public notoriety?

A. Yes.

815 XQ15. When your customers consequently, at that period, asked for a Chartreuse, they had in their mind a liqueur manufactured by the Carthusian Fathers?

A. That I do not know, sir. When we were asked for a Chartreuse we gave Chartreuse without troubling ourselves as to what the customer might think.

XQ16. You did not trouble yourself about it?

A. You know—

XQ17. Yes, sir. For how long a time have the Carthusian Fathers put on the market the liqueur

816 manufactured by them?

A. I believe that it was last year.

XQ18. No, the old liqueur?

A. That, I do not know.

XQ19. You say that you have been in your firm for nearly 25 years?

A. No, Chartreuse has been sold at the Grand Hotel for 25 years; I, five years ago.

XQ20. You have not heard that it has been sold for 50 years?

A. I only know that it is an old mark, I do not know for how many years it has existed.

XQ21. Was it a liqueur much appreciated?

A. Yes.

1105

XQ22. It was much sold? 817

A. Here, in Paris, the consumption was known, that could be known—

XQ23. It was much sold, was it not?

A. Enormously.

XQ24. It was therefore universally known?

A. There is no doubt.

XQ25. Do you know well the bottles and the marks in which and under which the Carthusian Fathers sold their liqueur in France?

A. Yes.

XQ26. Are they really this bottle and these marks, except the label at the bottom? 818

A. Yes, that is it.

(The witness examines the bottle marked Exhibit B.)

XQ27. In which bottles and under which marks does the Liquidator now sell the liqueur which he manufactures and which he denominates as Chartreuse?

A. They are similar to those.

XQ28. Identically similar?

A. Oh, I could not tell you.

XQ29. Here is his— Is it really his, as you sell it? 819

A. Whether it is that bottle or—

XQ30. Is it that bottle?

A. I do not know, sir.

XQ31. You sell it regularly?

A. I have not got it before me; when I have one of ours in my hand I will tell you it is that.

XQ32. Therefore you have no more confidence then that in the bottles which are current on the market?

A. That is the bottle.

820 XQ33. It is the same mark?

A. Yes.

XQ34. I do not ask you whether the liqueur is the same; I ask you if the bottle and the label are really the bottle and the label of the Liquidator?

A. The label is exactly the same, now if there is something more or less I do not know.

XQ35. In your opinion it is really that one?

A. I believe so.

XQ36. Here is, consequently, the old bottle of the Carthusian Fathers and the label of the Carthusian Fathers?

821 A. Yes.

XQ37. And the bottle of the Liquidator and the label of the Liquidator. Are these two bottles and these marks identical, except for the label at the bottom, which comprises a counter label for Russia?

A. Yes.

XQ38. They are really identical?

A. You ask me many things; a label may be greener than another.

XQ39. I put the two bottles in your hands; are they identical?

A. I think so.

822 XQ40. Is there not a slight difference?

A. That, sir, I am unable to affirm for you, I do not deal with Chartreuse every day. It seems to me that it is absolutely that which the Liquidator sells.

XQ41. Consequently if this bottle, Exhibit B, was presented to you, you would not be able to know whether it is from the Carthusian Fathers or from the Liquidator?

A. I have some at the hotel, I know where it comes from, I would be able to answer you better if I had a bottle before me. I have not looked at a bottle of Chartreuse for a month; I do not make an

inquiry to know whether a label is made in one way or another. 823

XQ42. We are before the Consul, and I ask you, on presenting a bottle to you: Could you tell me whether this is from the Carthusian Fathers or from the Liquidator?

A. It is not from the Carthusian Fathers, as they no longer make any.

XQ43. Of the old stock?

A. That is possible.

XQ44. Not taking account of the counter label beneath?

A. That, it is in my opinion the old label which was formerly made. 824

XQ45. From what do you see that?

A. I recollect that there is "Lith. Allier," that is no longer found on the bottles; that must be an old label.

XQ46. You are able to see that there is certainly "Lith. Grenoble"; that indicates that it is old?

A. I think that on the new one that is no longer there.

XQ47. And here is the label of the Liquidator which contains "Imp. Lith. Grenoble".

A. That must be the new, that.

XQ48. Is it easy to see the difference between the two labels? 825

A. That is seen very well.

XQ49. Just now you much hesitated to recognize it.

A. I did not pay attention to those details.

XQ50. You are, however, a cautious man; you are in business?

A. Yes, but I do not look at Chartreuse every day. I know one thing, that the old Chartreuse bore a label, Lithographie Allier, Grenoble, and that the new one does not.

826 XQ51. Good. But you, being in the business, you have been a long while in recognizing it; do you not think that any one who is not in the business, who comes to drink Chartreuse in a café, would be longer than you in recognizing the difference?

A. Perhaps so.

XQ52. I ask you for your opinion?

A. I do not know how the Chartreuse would be served to him; one might serve it to him in a small decanter or in a bottle without his knowing whether it is the new or the old.

XQ53. Therefore, according to you, the customer
827 does not know whether it is the new or the old?

A. According to the price he wishes to pay, we give him the old or the new. The old is dearer, but in certain establishments the customer does not see what he drinks if the bottle is not left on the table.

XQ54. The customer who asks for a Chartreuse, what Chartreuse do you pour him out ?

A. A Chartreuse.

XQ55. The Chartreuse liqueur?

A. That of the Liquidator. If he asks for the old we give him the old.

XQ56. Why that of the Liquidator?

A. Because if the customer asks for a Chartreuse,
828 a Chartreuse is given to him; if he asks for a Chartreuse of the Pères Chartreux, a liqueur of the Carthusian Fathers is given him. We give the customer what he asks for; if he asks for a Chartreuse a Chartreuse is given to him.

XQ57. Why that of the Liquidator?

A. Because one cannot sell him anything else than he asks for; if he asks for a glass of Chartreuse it does not mean to ask us for a glass of the liqueur of the Carthusian Fathers.

XQ58. But there are two Chartreuses?

A. We have the old, but we sell it double the

price of the new; consequently if the customer asks for a glass of Chartreuse—in every establishment today there is still some of the old, if he asks for the old Chartreuse the old is given him. 829

XQ59. If he does not ask for the old?

A. The other is given to him.

XQ60. Do you think that the client knows that the liqueur that is thus sold to him is manufactured by the Liquidator?

A. I do not think he troubles himself about that.

XQ61. He does not trouble about that?

A. I do not think so. The customer who asks for a glass of Chartreuse, he finds it good—I have never heard any reflections as to that. 830

XQ62. You declared to me just now that it was of public notoriety that Chartreuse was manufactured by the Carthusian Fathers. All at once one serves customers, who ask for a Chartreuse, with a liqueur which is no longer made by the Carthusian Fathers, but by the Liquidator. That which has taken fifty years to impress on the public mind, can it disappear from one moment to another, and do you believe that the consumer who, for fifty years, when he asked for a Chartreuse, knew that a liqueur made by the Carthusian Fathers would be given him, when he now asks for a Chartreuse believes that a liqueur which is no longer made by the Carthusian Fathers is served to him? 831

A. But I consider that the customer to whom we sell a glass of Chartreuse would make his remarks if he did not find it good. Up to the present time we have not heard any. When we give Chartreuse if the client does not find it good he asks of the waiter, who can give explanations.

XQ63. It matters little to you whether the customer knows or does not know that the liqueur that you pour out is made by the Liquidator?

832 A. Ah, that is indifferent to us. The moment we pour out a glass of Chartreuse, we give what the customer asks for. The customer would be able to complain if the liqueur of the Carthusian Fathers were given him when a Chartreuse is asked for; we give what he asked for exactly.

XQ64. Do you think that you could give—take a known mark of quinquina, if you like—another quinquina than the original quinquina, even if the second quinquina should be as good, even better?

A. If we are asked for a quinquina of a given firm— There is Dubonnet, the Raphael— We have
833 a quinquina of our own, a glass of "quinquina" only. We have a quinquina which is as good as that of Dubonnet and everybody. Consequently when one does not explain, we give quinquina—that is all—we do not go and explain whether it is a quinquina of a given firm that one has the habit of drinking. Chartreuse has become known to the public like the Dubonnet quinquina, one does not ask for a glass of Chartreuse, one asks for a Chartreuse like one asks for a Dubonnet.

XQ65. One does not ask for a quinquina?

A. No, one asks for a Dubonnet.

XQ66. But you have acknowledged that for the
834 public the word "Chartreuse" signifies a liqueur made by the Carthusian Fathers?

A. That, no; you sell a Chartreuse, one has not to know who makes it. A glass of Chartreuse is asked for; it is known that it is a liqueur that pleases the public, the public does not trouble whether it is the Carthusians who make it. The moment that the liqueur suits them they can be satisfied.

XQ67. You have recognized that you, you knew that Chartreuse formerly signified a liqueur made by the Carthusian Fathers?

A. We are dealers, we are better able to know

what is going on and who produces the goods than the consumer himself. Many consumers, I am certain of it, did not even know that it was the Carthusians who made it. 835

XQ68. You think it is indifferent—that the retailers alone are interested in knowing the origin of the goods, and that the customer has no interest in it?

A. I do not say that; I say that among the public, in general, there were some who knew that it was the Carthusians who made the Chartreuse, but many did not know it.

XQ69. For those who knew that the Carthusian Fathers manufactured, when they ask in a café for a Chartreuse and the waiter comes with the bottle in his hand— It is like that that he takes place? 836

A. Yes.

Q70. He pours out the liqueur for the customer?

A. Yes.

XQ71. Can the customer know whether it is the old liqueur manufactured by the Carthusian Fathers formerly or whether it is the liqueur of the Liquidator which is poured out for him?

A. He ought to know by the price— The customer who asks for a glass of Chartreuse, Chartreuse is given to him at the price it is sold at by everybody, but if it is the old Chartreuse which today costs double or triple, one must pay for it. 837

XQ72. But nothing on the bottle indicates that it is a liqueur made by the Liquidator that is thus sold to the customers?

A. Absolutely not.

XQ73. The customer is not able to know it?

A. You have the original bottle of the Liquidator, it is retailed just as it is bought.

XQ74. Then he does not know it?

A. It is for the customer to know what he is drinking.

838 XQ75. He does not know it?

A. It is for him to know what he drinks, it is for him to look at the bottle.

XQ76. Can he see on the bottle the words: "Imp. Lith. Grenoble"?

A. In some establishments he can, for the bottle is left on the table; the customer is not supposed to know what he drinks.

XQ77. In the café the bottle is left on the table?

A. I am not a café keeper; I never take anything in the cafés; I do not know what goes on there. I am a hotel keeper, we have a restaurant, an establishment where the bottles are left on the table. I
839 only know what goes on at our place.

XQ78. And you consider that the mentions on the two labels are sufficiently apparent to strike the customer so that he can see at once that it is not the liqueur of the Carthusian Fathers?

A. Up to the present we have sold the new Chartreuse, we have not had any remark. As to the education of the customer, it matters little to me; he can see or he cannot see; I serve him what I buy; it is for him to know what he drinks. I have never asked my customers: "Do you find it less good?" That is my business.

840 XQ79. It results that it matters little to you whether a customer may have thought he was drinking the liqueur made by the Carthusian Fathers when in reality he drank the liqueur of the Liquidator, the moment he made no complaint?

A. It matters little to me, the moment he asks for Chartreuse, I give him Chartreuse; if he asks for the liqueur of the Pères Chartreux, I pour him out liqueur of the Carthusian Fathers.

XQ80. Have you given any instructions to your staff to inform your customers who ask for Chartreuse that the Chartreuse you pour out is not the

Chartreuse formerly made in France by the Carthusian Fathers, but the liqueur manufactured today in France by the Liquidator? 841

A. I am not entitled to do that; it is a question for the manufacturer to make his goods known. I have not to give any recommendations to the employés: "You ought to point out to the customers—" A customer might answer: "I have no need of your observations; I am not a simpleton." Those are recommendations I do not make. The only recommendation I give is this: "You are asked for Chartreuse, you will give Chartreuse; you are asked for the liqueur of the Pères Chartreux, you will give the liqueur of the Carthusian Fathers." 842

XQ81. And that is because you consider that the customer knows what has taken place?

A. I do not trouble about that; I simply say: "I do not deceive the public; when a customer wants to drink Chartreuse, he drinks Chartreuse; when he wants to drink something else he drinks something else."

XQ82. You do not trouble to know whether your client knows or does not know that the liqueur is not the same as formerly?

A. That does not concern me.

XQ83. You have told me that your hotel has a cosmopolitan custom? 843

A. Yes.

XQ84. In good faith, do you not think that your customers, especially the foreigners, who are not experienced, who do not know about the political struggles that take place in France, might believe that the Chartreuse liqueur, which is thus put up in bottles identical with those which the Carthusian Fathers previously used, and which was on the world's market for fifty years, is still the same liqueur? In good faith, do you think so?

844 A. I think that whoever is well posted, who reads the newspapers, might be aware of what has happened. So if he has read that the Carthusians have been sent out of France, and manufacture another liqueur— If they care for the Carthusian Fathers it is for them to know what they have to drink— The Carthusian Fathers have done enough advertising to make their new mark known.

XQ85. It is not a question as to whether one cares for the Carthusian Fathers, but the liqueur manufactured by them?

A. I speak to you of that. He who wishes to take
845 a liqueur manufactured by the Carthusian Fathers ought to know that they have a mark of their own, a specialty of their own.

XQ86. And you think that they know that the liqueur which is sold at the present time by the Liquidator is no longer the liqueur of the Carthusian Fathers?

A. Oh; that I do not trouble about.

XQ87. Does the liqueur of the Liquidator resemble or not the liqueur formerly manufactured by the Carthusian Fathers?

A. The liqueur of the Carthusian Fathers does not resemble—

846 XQ88. Of the Liquidator?

A. The liqueur of the Liquidator more resembles the old Chartreuse than the liqueur of the Carthusian Fathers. That is incontestable.

XQ89. There is then a difference?

A. Any difference, I do not find much.

XQ90. Is there any?

A. I will tell you: It is perhaps by age that a little difference can be noticed, because the Chartreuse which we have is eight or nine years old; naturally, the alcohol used for making the Chartreuse can be of better quality than that of the Carthusian Fathers?

XQ91. You have noticed a difference? 847

A. We have done so several times.

XQ92. Between the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator?

A. Yes.

XQ93. But you attribute this difference to the age?

A. You are speaking of the old liqueur of the Carthusian Fathers? We have noticed a similarity between the new Chartreuse and the old, so much so that the new is better than that of the Carthusian Fathers.

XQ94. The new, the Liquidator's, is better than that of the Carthusian Fathers? It is then not the same? 848

A. Yes, it may be considered as becoming as good as the old Chartreuse.

XQ95. But, sir, you have just now said that the old improves in aging, that the difference might come from the age?

A. That is evident, as we have Chartreuse of 1877 and 1880, which is certainly superior to the new.

XQ96. And you just said that the liqueur of the Liquidator, which is quite new, is better than the old liqueur of the Carthusian Fathers?

A. No, no, I did not say that. 849

By Mr. Barbancey (to the stenographer): Will you repeat the answer?

Mr. Régli (Witness): I said that the new, that of the Liquidator, resembles enormously the old Chartreuse; I cannot say that it is the same, as it is not manufactured by the same person; it is a new product, is it not.

(The stenographer reads the answer to Question 93.)

Mr. Régli (Witness): Ah, the new! Beg

850 pardon, the new Chartreuse is better than the liqueur of the Carthusian Fathers.

XQ97. What do you understand by the liqueur of the Carthusian Fathers? There was no question of that just now; I spoke of the old liqueur of the Carthusian Fathers and that of the Liquidator, not that which is known at the present time under the name of Liqueur des Pères Chartreux. I asked you whether there was a difference between the old liqueur of the Carthusian Fathers and that of the Liquidator. It is to that question that you replied. Will you explain yourself?

851 A. I told you that the new Chartreuse—that the new Chartreuse—

By Mr. Barbancey: Allow me—

By Mr. Kelly: Let him speak, I beg of you.

Mr. Régli (Witness): I shall be glad to go; I have other things to do. I came hurriedly. I think that I have told you all that suffices, unless I pass all my time in order to be agreeable to you—

By Mr. Kelly: I ask the witness to simply reply to the question put and my adversary

852 not to interrupt.

By Mr. Barbancey: That is what I want in a very precise manner. I insist that to the precise questions I put a precise answer be given and not in a roundabout way.

By Mr. Kelly (to stenographer): Will you repeat the question?

(The stenographer reads Question No. 97.)

Mr. Régli (Witness): We have made trials several times; we have even—many times we have not been able to find the old Chartreuse

with the new manufactured; that is to show you how much it resembles the old. I cannot tell you it is the same, as it is not the same manufacture, but many times we have gone in for tasting, and we have not been able to trace, many times, the old and the new. That is to show you that the new, we consider it as being as good as the old. 853

XQ98. I believe, sir, in order to be more clear, it would be better to take some other terminology than the new liqueur. That might create some confusion. Would you like the old liqueur of the Carthusian Fathers to be always called the old liqueur of the Carthusian Fathers? 854

A. I make no confusion. We have only two Chartreuses. The old and the new, and the liqueur of the Carthusian Fathers, that is not Chartreuse. I understand the sense of your words; I know that there are two Chartreuses, there are not three.

XQ99. There is no difference between the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator?

A. Absolutely none.

XQ100. None?

A. Absolutely none. 855

XQ101. The two liqueurs are identical?

A. Absolutely.

XQ102. There is not even the difference which comes from age?

A. When we have old Chartreuse—we have some very old—I have seen some not so old as ours; we even went to the expense of comparing, when needed, sometimes, four of us, five; we did the tasting; we could not trace the old from the new; we could only trace them by the marks made on the bottom of the glasses.

856 XQ103. Therefore the liqueur of the Liquidator does not differ even from a very old liqueur of the Carthusian Fathers?

A. That is another question to which I would not reply. I have not to know whether the old Chartreuse is not equal to the new. I suppose that I have none, so it is a question to which I do not reply; it is not in my power. I have not to tell you whether I have any old Chartreuse or whether I have not; that is my business, it is not yours.

Q104. I do not ask you whether you have any Chartreuse, very old Chartreuse—

857 A. I tell you that the new and the old could be put side by side, that is sufficient for you. I have other things to do; I have not all the afternoon to spend here. I have done so in order to be agreeable to Mr. Kelly.

By Mr. Barbancey: If you like we can postpone it to another day.

Mr. Régli (Witness): Am I obliged to come here? My pleasure is not to come here!

By Mr. Barbancey: You have consented to come, you are bound to answer my questions.

Mr. Régli (Witness): It is simply by cour-
858 tesy that I came; all that I have told you in a very square manner seems to me ought to suffice. You have asked me for my opinion; I believe I have given it to you.

By Mr. Barbancey: You speak of courtesy, but—

Mr. Régli (Witness): You asked me to come; I came willingly. It seems to me that I have said enough.

By Mr. Barbencey: Will you allow me? I will make my examination as rapidly as possible—

Mr. Régli (Witness): It is ten minutes past three, I am obliged to go home. I ought to have been informed that it would take three hours! 859

By Mr. Barbancey: It is to Mr. Kelly to whom you should address this reproach.

Mr. Régli (Witness): Will it take much longer?

By Mr. Barbancey: Perhaps half an hour, if you answer precisely.

XQ105. I put my question to you for the last time; there is no difference between the old Chartreuse and the liqueur of the Liquidator? 860

A. No.

XQ106. Do you know the liqueurs that the Carthusian Fathers make at the present time at Tarragona, in Spain?

A. I have tasted it, yes.

XQ107. Often?

A. Several times, as we make taste.

XQ108. Does it resemble or does it not resemble the old liqueur that these same Carthusian Fathers made in France?

A. No.

XQ109. What difference is there between the two liqueurs? 861

A. All that I can tell you is that there is in this new liqueur a taste of pepper, to what I cannot ascribe; it is not the Chartreuse of the Liquidator.

XQ110. Consequently, according to you, the liqueur of the Carthusian Fathers actually made by the Carthusian Fathers differs from the old liqueur of the Carthusian Fathers and from the liqueur of the Liquidator because it has a taste of pepper which the others have not?

A. I tell you, and I repeat it: It does not resemble

862 the new Chartreuse, absolutely no. My answer is clear.

XQ111. You tell me that it has a taste of pepper?

A. It has a strong taste; it is less mellow than the new Chartreuse of the Liquidator.

XQ112. It has therefore a taste of pepper which the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator have not. Will you characterize the impression on the taste that the two other liqueurs produce; the old liqueur manufactured by the Carthusian Fathers—

A. But, sir, I will tell you, you all know the Chartreuse, do you not, and I also, I have not to give you
863 the qualities of Chartreuse—

XQ113. You testify as to the qualities of the Chartreuse.

A. It is a liqueur which may be agreeable to some, disagreeable to others.

XQ114. For you, sir.

A. I never drink any.

XQ115. Then you do not know—

A. I taste it, I do not drink liqueurs as a rule.

XQ116. Therefore not drinking liqueurs you cannot tell the taste that they leave?

A. Quite so. But I have not got to tell you the
864 taste. That is a question of personal appreciation, which I keep to myself.

XQ117. I ask you for your apperciation?

A. I have not to give it to you; if I eat a beefsteak? I have not to tell you whether I find it good or bad.

XQ118. Yes, indeed, if you come to testify as to whether the beefsteak was good or bad, you came at the request of Mr. Kelly—

A. I have not to give you an appreciation as to Chartreuse. I tell you; it has an agreeable taste, if you want me to tell you.

XQ119. Of what does this agreeable taste consist? 865

A. It is necessary to be an amateur of liqueurs to tell you that taste.

XQ120. You do not know what is the taste that the old liqueur of the Carthusian Fathers leaves?

A. I am not going to answer you about that.

XQ121. You refuse to answer?

A. Yes.

XQ122. And the liqueur of the Liquidator, what taste does it leave?

A. I do not answer you that either. I have told you the difference I made; I do not drink any, I have tasted it several times, I have told you why I found it not so good as the other, there may be the quality of the spirit, I do not know, which makes it not so good. 866

XQ123. You complain that the examination lasts—you reply to questions I do not put to you. I ask you: What taste does the liqueur of the Liquidator leave?

A. I have told you; it leaves a biting taste, as if it were pepper.

XQ124. In all justice I must tell you that you are in error; I ask you for the taste of the liqueur of the Liquidator? 867

A. I will not answer you that either.

XQ125. You refuse to answer?

A. Yes.

XQ126. I notice that you have affirmed—

A. I have not got to answer you as to the taste it leaves me. If I drink a glass of wine I have not to tell you whether it pleases me or not. If I take a new Chartreuse or the liqueur of the Carthusian Fathers it is for me to know whether it is good or bad, I have not got to communicate my impressions to other people, neither here nor elsewhere.

868 XQ127. Then you have consented to come and testify in a trial—

A. I do not know; I have not been told.

XQ128. I ask you—and it is an important point in the proceedings—whether there is a difference between the old liqueur of the Carthusian Fathers and the liqueur of the Liquidator, you reply that there is no difference and you refuse to indicate on what you base your statement. I simply note—

A. You can note.

XQ129. And I make full reservations?

869 By Mr. Kelly: I make an objection; the witness has already explained the difference several times. It is impossible for a witness to explain what is the taste that a liqueur leaves on him. I myself would not be able to do so.

By Mr. Barbancey: I maintain my observation. As to the observation of Mr. Kelly I will merely call attention to the fact that his preceding witnesses have all indicated the taste that the Chartreuse liqueur left.

By Mr. Kelly: Not otherwise than what the witness has just done, in exactly the same way.

870 By Mr. Barbancey: He has not indicated the taste that it left.

By Mr. Kelly: I myself do not understand. I cannot explain the taste that Chartreuse leaves.

XQ130. Is the old liqueur of the Carthusian Fathers more alcoholized than the liqueur of the Liquidator?

A. I could not tell you.

XQ131. Is the liqueur from Tarragona, at the present time manufactured by the Carthusian

Fathers, more alcoholized than the liqueur of the Liquidator? 871

A. I could not tell you; I have not gone in for experiments in analyzing.

XQ132. Is the liqueur from Tarragona more sugary than the liqueur of the Liquidator?

A. That of the Liquidator—that is all I have to tell you—pleases me better, and I am not the only one. When we taste goods we do the tasting in a proper manner, we are four, five, six, we do the tasting seriously with a secret vote, we gather up the number of votes for such and such a thing. I cannot tell you whether it is more or less sugary, it has not the same frank taste as the Chartreuse 872 of the Liquidator.

XQ133. You cannot say whether it is more or less sugary?

A. No.

XQ134. Whether it is more or less alcoholized than that of the Liquidator?

A. No.

XQ135. Is it a regular habit for the wine butlers to appear before the customers at the end of the meal with a certain number of bottles of liqueur?

A. Yes, the waiter always offers the liqueurs.

XQ136. Before the litigation which has arisen 873 between the Liquidator and the Carthusian Fathers was it the custom to offer customers simultaneously liqueur—brandy, kummel and Chartreuse?

A. Liqueurs are offered, sometimes four, five, six, seven, eight bottles, that depends, that may depend entirely on the number of persons who are at table. If there are two persons they are asked: What liqueur will you take?. If there are seven or eight persons the waiter comes with a set of bottles, what comes first to him.

XQ137. It was not the habit to offer rather

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874 liqueur—brandy, kummel and Chartreuse because it was supposed that these were the favorite liqueurs of the public?

A. Liqueur, brandy, Chartreuse, curaçao, four or five high priced liqueurs were offered.

XQ138. That was not the habit?

A. These were given all the time; besides in our restaurant we have a set of liqueurs in sight of the public. The customer knows in advance what he wishes to take if he is alone, if there is a big table seven or eight bottles are placed on it so as not to ask each person. The customer says: "Give me a Chartreuse, give me that—"

875 XQ139. Then it was not a regular routine, that is what I said? Are you not interested directly or indirectly in the business of Mr. Cusenier?

A. No.

XQ140. You are not interested directly or indirectly, in the business undertaking of the Chartreuse made by Mr. Cusenier?

A. No. I know Messrs. Cusenier very well, but as to having business relations with them, no.

XQ141. You are not a shareholder in the Cusenier Company, you or the Grand Hotel Company?

A. No, the Grand Hotel, no.

876 XQ142. At the time of the last General Meeting of the Cusenier Company, did you not deposit stock in view of being able to attend or to be represented at the General Meeting?

A. No.

JACQUES RÉGLI.

Session of Thursday, April 26th, 1906, continued. 877

Examination of MR. HENRI CLAVERIE.

HENRI CLAVERIE, of No. 6, Rue Saint Sulpice, Paris, France, aged 27 years and upwards, student, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. E. Kelly, representing the Defendant:

Q1. What is your name? 878
A. Claverie, Henri.
Q2. Your residence?
A. No. 6, Rue Saint Sulpice.
Q3. Your occupation?
A. Student in pharmacy. I am 27 years of age.
Q4. What is the occupation of your father?
A. He is a chemist.
Q5. Where?
A. At Luzes and at Barèges.
Q6. Luzes and Barèges?
A. Luzes and Barèges. Luzes in the winter and Barèges in the summer.
Q7. Have you attended to his business? 879
A. Yes, sir, I go there each year in September, during the holidays, I work there with him.
Q8. At Barèges?
A. Yes.
Q9. Have you studied botany in the region?
A. Upon my word. Like all students follow botany, more for amusement.
Q10. Do you know the hypericum?
A. Yes, I know the hypericum perforatum, it is the only one I have seen at home.

880 Q11. Have you ever heard of the hypericum nummularium?

A. No, not at home.

Q12. Have you ever seen it grow at your home?

A. No, sir.

Q13. It has never been asked for at your pharmacy?

A. No, sir.

Q14. Will you examine this parcel and the parcel marked No. 4, and tell me if it really comes from the house of your father?

A. Yes, sir, it is my mother's writing.

Q15. Your mother's?

881 A. Yes, sir.

Q16. Can you read the words above: "Envoi de—?

A. "Envoi de Mademoiselle"—I know nothing about it—"Capa—?"

Q17. No matter if you do not know it. Will you examine the letter marked No. 8, and tell me if you know the writing?

A. It is also my mother's.

Q18. It is from your mother also?

A. Yes, sir.

882 By Mr. Kelly: I thank you.

Cross-interrogatories by Mr. J. Bonnet, representing the Plaintiffs:

XQ1. Sir, your father sent a telegram in which I read, according to his expression, that you are "très ferré" (well versed) in botany?

A. I am not well versed.

By Mr. Bonnet: What do you say, sir?

By Mr. Kelly: I have an objection to

make, the telegram does not say he is well versed in botany, it means to say that he is well versed on the question under consideration, that is to say to be able to know whether hypericum numullarium or hypericum perforatum was asked for in the region. 883

By Mr. Bonnet: I would point out that Mr. Kelly makes a comment on the telegram in his own way of looking at it, I do so in my way; the judges will see which is right.

XQ2. Do you know the hypericums, sir?

A. I know but one, the hypericum perforatum, that which I have seen in the garden of the school and at home. 884

XQ3. You do not know of any others?

A. No others. I have not followed botany in any special way, I have studied it for my examination, that is all.

XQ4. You do not know the other species of hypericums?

A. No.

XQ5. You could not describe them?

A. No, sir.

XQ6. Will you give me a description, as scientific as possible of the hypericum perforatum? 885

A. The hypericum perforatum is thus called because one can perceive, when a leaf is put up to the light, small wrinkles in the leaves.

XQ7. What are these leaves like?

A. The leaves are slightly oval.

XQ8. What are the flowers like?

A. The flowers are yellow, small yellow flowers.

XQ9. What shape have they?

A. A shape—

XQ10. What are the sepals like?

A. I do not know.

886 XQ11. I will put the question to you again: what are the sepals like?

A. I do not know, sir, I am here absolutely—I do not know.

XQ12. Could you tell me whether the flowers are or are not corymbous?

A. Oh, I do not know, sir, I am not a botanist, you know.

XQ13. You have said, sir, that hypericum nummullarium was never asked for in the pharmacy of your father?

A. I have never heard it asked for.

887 XQ14. Are people in the habit of asking for plants by their scientific name when they go into a pharmacy?

A. No, they ask for "mille-pertuis" (hypericum).

HENRI CLAVERIE.

Session of Thursday, April 26, 1906, continued.

Examination of XAVIER ROCQUES.

888 XAVIER ROCQUES, of No. 2 Place Armand Carrel, Paris, France, chemist, aged 45 years and upwards, having been produced, sworn and examined on the part of the defendants doth depose and say as follows:

Direct-interrogatories by Mr. E. Kelly, representing the Defendants:

Q1. What is your name?

A. Rocques, Xavier.

Q2. Your profession?

A. Chemist.

Q3. Your residence?

A. Paris, Place Armand Carrel, No. 2. 889

Q4. Your age?

A. Forty-five years.

Q5. How have you been occupied as a chemist?

A. What are the scientific posts I have filled? I belonged to the Municipal Laboratory of Paris for ten years, from 1879 to 1889, then I was consulting chemist to a certain number of food product firms, specially the firm of Potin, and for 6 years I have also devoted myself solely to judicial appraisements, when I was named expert of the Tribunal.

Q6. Do you know Chartreuse?

A. I know Chartreuse.

Q7. Do you know the imitations of Chartreuse? 890

A. I have had occasion to see a sufficiently large number, I believe there have been a very great quantity.

Q8. Have you been called upon to study them as a chemist?

A. I have studied them, I have been called upon to study them, being the adviser of firms who deal in liqueurs, from an exclusively chemical point of view; from a scientific point of view the studies that have been made upon it are relatively limited. And then I have often been called upon to assist at tastings of these liqueurs, at samplings by comparison. 891

Q9. What are the imitations you have had occasion to see tasted?

A. There are a great number of names, I do not remember them very well. I remember a little about the liqueur Bonal, of a liqueur that was called the "Semblable," I do not know if it is the same now. The firm of Potin made a liqueur that was called the "Couvertine." I have seen a great number of others, but the names escape me.

Q10. Do you remember a liqueur Jaune that was sold under the label of Mr. Cusenier?

892 A. Yes, the new Chartreuse.

Q11. No, I speak of some time ago.

A. Nearly all the distillers made a liqueur that was an imitation of Chartreuse, and which, in language of the trade was called "Liqueur Jaune."

Q12. Did certain of these imitations resemble the Chartreuse manufactured by the Carthusian Fathers before their departure from France?

A. There were liqueurs which were very near Chartreuse, in fact which might—

Q13. What were the imitations which were the nearest to Chartreuse, according to you?

893 A. It seems to me that Bonal was one of these which were pretty near it.

Q14. Was it near enough to be confounded some times by tasters?

A. Oh, yes, I heave seen them confound it many times.

Q15. By known tasters?

A. Well, yes, in fact by people who are competent, who knew the matter well.

Q16. In what, according to you, consists the superiority of the Chartreuse manufactured at that time by the Carthusian Fathers at La Chartreuse?

894 A. Well, I think that one of the superiorities must have been the nature of the primary ingredients that they used.

Q17. Do you know the liqueur made at present by Mr. Cusenier on behalf of the Liquidator at La Chartreuse?

A. I have had occasion to examine it from the analytical point of view, and from the point of view of tasting.

Q18. Do you find that it resembles the Chartreuse manufactured by the Carthusians before their departure from La Chartreuse?

A. I find that it has a very great resemblance.

Q19. As the imitations resemble, according to

you, the liqueur formerly manufactured by the Carthusian Fathers at the Chartreuse, what conclusion do you draw on the subject of the alleged secret of the Carthusians? 895

A. I, I believe that it is—the manufacture of the liqueur is a business—it is a kind of cooking, you know, it is a culinary recipe. I consider that the moment you get something analagous there is no very important secret.

Q20. All distillers have a secret of their own, have they not; every distiller has his own secret?

A. Every distiller has his recipes, his little knacks, his little processes.

Q21. But for the manufacture of a liqueur resembling Chartreuse there is not, so to speak, any general secret? 896

A. They came very near, there were a lot of people who made liqueurs very similar.

Q22. And have not the Carthusians always maintained that the merit of the Chartreuse was due to the manufacture at the Grande Chartreuse because of the plants of the Grande Chartreuse?

A. That is an opinion I have always heard put forward.

Q23. Have you ever heard it denied before this litigation. 897

A. I have always heard that Chartreuse owed the greater part of its qualities to the nature of the plants which enter into its composition.

Q24. What do you say as to the respective merit of the liqueurs manufactured by Mr. Cusenier at the Grande Chartruse and by the Carthusian Fathers at Tarragona relatively to the old liqueur?

A. The tasting at which I have been present generally gave the following results: the old liqueur of the Carthusians, the Chartreuse of the Carthusian Fathers, and the Chartreuse manufactured by

898 the Liquidator are very nearly alike, and the Tarragona liqueur differs sensibly. Generally it was the Tarragona liqueur which showed out in the tastings. This is how it generally happened. I have no need to tell you that tastings are not always certain— People are not always of the same opinion.

Q25. To what do you attribute the difference between the liqueur manufactured by Mr. Cusenier at the Grande Chartreuse and the liqueur manufactured by the Carthusian Fathers at present at Tarragona?

A. I think that must be the nature of the primary ingredients, specially of the plants probably.

899 Q26. Can you tell me if there are certain plants of which the essences can be made in a relatively fresh state?

A. I think that whenever plants are concerned or rather a part of a plant, of which the odour is due principally to the flower, it would be better to work upon fresh plants, or very little dried. When, on the contrary, it is the leaf or the stem which gives the perfume it would be better relatively to work on the dry plant. On the subject of fresh plants it is whenever there is a flower that comes in.

900 Q27. Do you know if to make the perfume of the orange flower, the orange flower is used in the fresh state or in the dry state?

A. In the fresh state.

Q28. And for roses?

A. The rose?— In the fresh state.

Q29. Do you know whether Potin made an attempt to manufacture orange flower water at Paris using orange flowers coming from Nice?

A. He did so formerly, a fairly long time ago. He had the orange flowers brought from Nice by express train and distilled them at Paris, but they gave it up; they realized that it was defective, be-

cause the flowers spoil very rapidly, and at present they do their distilling at Nice. 901

Q30. Does the same plant growing in different regions even having the same altitude always have —always present the same qualities?

By Mr. Bonnet: This gentleman has not qualified as an expert botanist.

A. From the point of view of the perfume?

Q31. Yes?

A. Why, no, the perfume of plants depends on the conditions in which they grow, from all sorts of points of view. 902

Q32. Can you give me examples of what you state?

A. Ah, there it is evident that it is a distiller who would give the most striking examples, but I think I know of many plants, mint, lavender, balm, which do not give the same perfume according to the localities from which they come.

Q33. Can you inform me a little more exactly about lavender, for example.

A. Ah, I have not very exact information, but at least the lavenders of different sources do not contain the same proportion of essence nor the same nature of essence—the bouquet, as quality of essence— As to this I have not exact information. 903

Q34. And grapes?

A. Grapes from the point of view of the wines that it gives, of the quality of the wine, of the bouquet that it may have?

Q35. Yes?

A. For that there is a considerable difference. If the same grape vine is taken and is transported into different regions it gives wines which have

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904 very different aromas, aromas due not only to the fermentation but to the nature of the grape, the fact happens even in a region of relatively small extent, as for example in Burgundy. In Burgundy all the fine wines are produced by a vine that is called the "Pinaud." This Pinaud gives wines which have very different characteristics according to the soil, according to the region in which they were grown. Thus, for example, Corton, is but a small strip of ground, extremely small; the Pinauds which grow at a little distance from the Corton soil have not the same characteristics as those of Corton; it is simply, extremely so even peculiar
905 to the locality, to the exposure, it is a difference of soil. There are consequently a mass of things which have an influence on the bonquet, on the perfume.

Q36. Does the altitude play an important part in this question?

A. It does one, but I do not think it is the principal one, it is above all a question of soil in this case.

Q37. Do you know the Sanglé-Ferrière method for the proportioning of essence?

A. It is a method that is based upon the deter-
906 mination of the index of iodine, that is to say upon the quantity of iodine which the essences absorb. The essences absorb varying quantities of iodine that can be measured for each of them, and in determining the index of iodine if you have to deal with a well-known essence, well determined you can, by determining the index of iodine succeed in ascertaining pretty nearly, but evidently when you have a mixture of essences the ascertaining of the index of iodine is but of small help, because the essences have all a different index of iodine; there are some even which have an index equal zero, others which have an extremely high index; con-

sequently as far as a mixture is concerned you can find out nothing. 907

Q38. Then the index of iodine is useful only as regards a simple essence?

A. That is the case in which it is most useful. Ah, when it is a case of a comparison between two solutions of a single essence it may give quantity of the essence very exactly.

Q39. When there are two essences mixed?

A. As their index of iodine is generally different there is nothing to be gained by ascertaining the index of iodine.

Q40. When there are two essences?

A. Naturally. 908

Q41. And when there are four?

A. Still less.

Q42. And when there are ten?

A. Still less.

Q43. Is it of any utility whatever when there are ten?

A. Ah, no, when you have a mixture of essences it has no longer any bearing; one no longer knows what to go by.

Q44. Then can the Sanglé-Ferrière method be usefully employed in order to obtain every year a type essence of a given flower? 909

A. You mean: that a plant or flower being given can one by means of the Sanglé-Ferrière method have a solution, an alcoholate containing always the same quantity of essence?

Q45. Yes?

A. Well, yes, that might be useful, evidently, but I think it is still by the aid of tasting, together if necessary by this index of iodine, that a more exact result can be had. The index of iodine of the essences might itself vary, they have not a constant index of iodine; consequently if a plant has given

910 one year an essence with a given index of iodine the following year it may give a different index. Therefore the index of iodine by itself would not permit us to make a standard liqueur, it must be by the help of tasting; if the two things go together taste and verification by the index of iodine, almost a standard alcoholate can be got.

Q46. But alone, seeing that the perfume of the plant is composed of many essences, is it possible by the index of iodine alone, to get a standard essence?

A. The index of iodine alone would not appear to me to be absolutely sufficient.

911 Q47. The essences which the plants produce vary every season, do they not?

A. Yes, evidently; it is an extremely complex body, an essence, it is a mixture of many bodies, with chemical functions, even very different, and its proportions are not invariable, even the principal element often varies within fairly wide limits.

Q48. Do you know vanilla and vanilline?

A. Vanilla and vanilline?

Q49. Yes?

A. Vanilline is the active principle of vanilla, that may be extracted from vanilla, and which

912 is also prepared synthetically.

Q50. Chemically there is no difference, is there between vanilla and vanilline?

A. Chemically, no.

Q51. And as to taste?

A. As to use rather?

Q52. Can one distinguish or not between the two by taste?

A. Yes, vanilline does not give in use absolutely the same results as vanilla. Thus for example in chocolate, you cannot entirely substitute vanilline for vanilla, even in equal proportions and even exaggerated because vanilla contains, as well as

vanilline, other substances, volatile perfumes, fatty matters, more or less aromatic, which are not found in the vanilline alone. The perfume of vanilla is richer than that of vanilline, which is more dry, as we sometimes say in the trade. 913

Q53. Can you by tasting get to easily distinguish vanilla from vanilline?

A. Yes, it may be distinguished— However, it does not give the same results practically.

Cross-interrogatories by Mr. J. Bonnet, representing the Plaintiff:

XQ1. You said that amongst all the Chartreuses that you had had to examine or that you have seen tasted, there were some which were very near Chartreuse? 914

A. Yes.

XQ2. And you specially quoted the Bonal liqueur. What do you call being very near Chartreuse?

A. I mean to say that in tasting you easily confound them.

XQ3. Therefore according to you, by tasting the Bonal liqueur and the liqueur formerly manufactured by the Carthusian Fathers at La Chartreuse are confounded? 915

A. That happens sometimes.

XQ4. But what do you call sometimes?

A. I mean to say that tasting is not a thing which always gives mathematical results and that the tasters sometimes do not agree.

XQ5. You are a chemist, a very accurate mind, you must be a little so in your replies.

A. One cannot be exact in tasting.

XQ6. I note the reply. You said also, that according to you, the superiority of the Chartreuse

916 was due to primary ingredients, to plants. How do you know that?

A. I do not see that any other explanation can be found for that superiority. It is the most rational explanation of that superiority.

XQ7. Then it is simply because the explanation appears to you rational that you give it? It is not the result of direct studies?

A. It is the result of observations upon analogous liqueurs.

XQ8. Do you know the plants that are used in analogous liqueurs?

A. Yes, I know the plants that are generally used
917 to manufacture this kind of liqueur.

XQ9. You have therefore a means of comparison: the plants that are used in liqueurs analogous to Chartreuse. Do you know the plants which are used for the manufacture of Chartreuse?

A. No, I do not know them.

XQ10. Then the second term of comparison is missing?

A. I cannot compare those formulaes, no, because there are some which I do not know.

XQ11. You said, however, that according to you, this superiority was due to the plants, and you
918 state you do not know what are the plants used by the Carthusian Fathers?,

A. No, I do not think that we are quite on the same question. I do not speak of the formula, of the recipes, I spoke of the nature of plants. I believe that the plants of the region of the Chartreuse have more delicacy and a bouquet more appropriate for the manufacture of Chartreuse than the plants of another region. That is what I wish to say.

XQ12. Do you know where Bonal's liqueur is manufactured?

A. I know nothing about it.

XQ13. Do you know that it is manufactured just by the liqueur of the Carthusian Fathers? 919

A. As a matter of fact I believe that it does come from that region.

XQ14. Do you know where the "Semblable" is manufactured?

A. It is close to Lyons, I believe.

XQ15. You also stated that the liqueur of Mr. Cusenier greatly resembles the Chartreuse formerly made by the Carthusian Fathers?

A. A new liqueur, the liqueur of the Liquidator, yes, yes.

XQ16. Will you state precisely what you mean by resemblance? Is there a similarity or a relationship? 920

A. No, there is more than relationship, there is confusion by the tasting. That is what I mean by great resemblance, that is to say, that in tasting under the habitual good conditions of tasting one may be taken for the other.

XQ17. Is it a general rule, the confusion, or an accidental rule?

A. I have generally seen it happen.

XQ18. How many times have you seen this experiment made?

A. The tasting? 921

XQ19. Yes?

A. Ah—I do not know—perhaps—I have seen it done at least once a week for five or six years perhaps— Tasting of liqueurs, not that one.

XQ20. I speak to you of that one?

A. I mean to say that I have seen tastings about once a week.

XQ21. There is some confusion here, which I want to do away with. You told me that there is a resemblance between the liqueur of the Liquidator and that which the Carthusian Fathers formerly

922 manufactured; you spoke to me of tastings at which you were present. How many have you seen?

A. I have been present at one tasting every week about; I do not know from what period that dates—

XQ22. Where did you see that?

A. At Potin's where they often made the comparison.

XQ23. How long is it since you left the firm of Potin?

A. Six years ago officially, but I have continued to keep a footing there for experiments. I still have the laboratory.

923 XQ24. You go there every week?

A. Yes, very often.

XQ25. And every week you were present at a comparative examination?

A. Every week is a manner of speaking—but nearly every week.

XQ26. Therefore at the firm of Potin nearly every week?—

A. They often compare, there are people who are interested in that and who follow—

XQ27. We will go back to the tasting a little later. You say that the manufacture of liqueurs

924 in general is a culinary recipe. I know that chemists look down with some little scorn upon distillers. But will you tell me then how it is that such a liqueur should be superior to such another, or should be considered superior by the public? And I take here liqueurs which are not manufactured in given regions?

A. But if, to continue this comparison of a culinary recipe— Why does a recipe please the public better, because it flatters its taste better, there is no scientific reason.

XQ29. You do not think that in the manufacture there are what are called knacks?

A. Yes, indeed, there are always little knacks. 925

XQ30. Do not these little added knacks constitute, from a commercial point of view, an interesting process?

A. Oh, yes, indeed, there are cases where these knacks are most interesting, very interesting.

XQ31. You said also, sir, that certain flowers were necessary in the fresh state, in general, in the liqueur trade. But in the Chartreuse trade, would you kindly tell me what are the plants that must be used in the fresh state?

A. Ah, I would not like to specify plants more exactly, but it can well be understood that there may be an interest in using certain plants in a fresh state. For if there are taken—I have done it on a certain number—plants perfectly dry, and others with flowers at the top partially dried, the alcoholates are not the same, there is more fineness in one case than in the other. 926

XQ32. I do not want to remain on generalities. We are dealing with the manufacture of Chartreuse you have talked a lot about orange blossom and Burgundy, but I should like us to remain simply on this limited ground. Will you kindly let me know by name the plants that it is suitable to use in the fresh state in the manufacture of Chartreuse? 927

A. I know nothing about it, about the plants that ought to be used in the fresh state. I remark that I have made observations which have shown me personally that certain plants distilled fresh give different results to the same plants distilled dried. I do not know whether in Chartreuse it is such and such a plant; I do not know the recipe used by the Carthusians nor that of the Liquidator.

XQ33. Mr. Kelly put a question to you just now; this is it so far as I was able to write it down: The perfume of a plant is composed of many essences?

A. Yes.

928 XQ34. Well, I put the question to you: is it correct?

A. Ah, I think so. The perfume of a plant is not a simple thing, you know, it is a combination.

XQ35. I would not like any confusion to arise, sir, it is not a question of knowing whether an essence is a single or complex body; I know that an essence is composed of a combination of chemical functions. But you know what is called an essence?

A. Yes.

XQ36. By adapting this definition which is given can you tell me whether it is exact that the perfume
929 of a plant is composed of several essences?

A. I do not understand—look here, you do not want me to talk about the components, to consider the case of components of an essence?

XQ37. It is evident that a given essence is composed of cetones, of aldehydes, those are the elementary components of the essence, and it is this heterogeneous combination which constitutes the essence. Mr. Kelly put a question to you about which I want an explanation, it is not on the subject of your reply but on the subject of the question: "Is the perfume of a plant composed of several
930 essences?"

A. It is put in that way, the question?

XQ38. If you like we will read it over. By the way you have answered you are evidently confused.

A. I understood otherwise.

XQ39. I was sure you had not understood, that is why I made this observation.

A. I believe that the question was put in another manner: "Do the plants give the same perfume?"

XQ40. I am going to put a single question to you and I will continue the next time. Let us take the essence of mint: are there several essences?

A. Yes, there are several essences. 931

XQ41. From mint several essences are extracted?

A. No. There are several kinds of essences of mint.

XQ42. I take a plant—

A. Not the same plant, no, no.

By Mr. Bonnet: I will continue next time.

By Mr. Kelly: At the request of Mr. Bonnet we adjourn.

By Mr. Kelly: I thank you, Mr. Kelly. To what date? 932

(The Commission is adjourned to Monday, April 30th, 1906, at 2 o'clock, for the continuing of the examination.)

(Session rose at 3 o'clock P. M.)

Session of Monday, April 30th, 1906, at 2 P. M.

Present—Parties as before.

Examination of MR. XAVIER ROCQUES, continued. 933

By Mr. Kelly: It will perhaps facilitate the cross-examination by Mr. Bonnet if I acknowledge at once that in question No.— Can you tell me the number of the question which you criticised?

By Mr. Bonnet: You did, I think, put a question like this: Can one plant give different essences?

By Mr. Kelly: It is not exactly that; I had marked the question— Here it is, Question No. 46. I had the intention of saying: Is

934 the perfume of a plant composed of different elements?

By Mr. Bonnet: I understood that is what you meant to say, that is why I had you repeat the question, and that I put it to the witness.

By Mr. Rocques (Witness): Yes, I understood it in that way.

Cross-interrogatories by Mr. J. Bonnet, representing the Plaintiff (continued):

By Mr. Bonnet:

935 XQ43. Sir, in the examination you underwent at the last sitting, you told us that especially as regards Chartreuse there was no secret, and, speaking of liqueurs, of the manufacture of liqueurs, you declared that this manufacture came rather under the category of what one would call culinary recipes Well, I would be glad to hear you state more precisely the meaning of these words. What do you call in the first place a secret of manufacture? For directly you make a difference between a secret of manufacture and a culinary recipe you must probably find that the culinary recipe differs from the secret of manufacture. In order that there 936 may be no confusion I would much like to hear a definition given of a secret of manufacture and of a culinary recipe.

A. Secret of manufacture?— What is it that can constitute a secret of manufacture? It is the process of manufacture—it is the way of proceeding in a manufacture which may be different from another manufacture. Now, culinary recipe—well, is there a secret in a culinary recipe? Can there be a secret in a culinary recipe? That is equivalent, I think, to saying—

XQ44. I put the question to you again.

A. Well, yes, I do not find very precise literary definition to say that. 937

XQ45. I do not ask for a literary definition, but for a definition as scientific as possible.

A. I am trying to find words which precisely state my thoughts. A secret of manufacture, is evidently something which is pretty important in a manufacture, one can modify it by following another process—

XQ46. You have no other difference to bring forward?

A. Well, I think that a secret of manufacture, it is something which is understood of itself, at least— 938

XQ47. Do you think that in this case that has a certain interest?

A. Yes.

XQ48. You speak of a secret of manufacture, you speak of a culinary recipe, you speak of process. Well, in order that your declarations may have certain importance, it is necessary at least that you should tell us in a clear and precise manner what you understand by a secret of manufacture, a culinary recipe and a process, and I confess that up to the present the explanations you have given do not appear to me very satisfactory. 939

A. Well, if we state precisely, if we speak of the manufacture of liqueurs—we are dealing on the whole with the manufacture of liqueurs—of what may consist the secret of manufacture of a liqueur? It may consist in the nature of primary ingredients, in the manner of handling, of distilling. That is about where the secret comes in, where one can try to locate this secret. It seems to me that what has struck me in this matter is that it deals with the manufacturing of a liqueur, it is the result that must be examined. If it is found that two liqueurs prepared even under conditions we do not

940 know at all are identical or appear fairly identical I do not see that there is any secret or at least that secret appears to me easy to discover. That is what I meant to say.

XQ50. Do you not consider that to reason as you do it would be necessary to begin by establishing that if the same result or fairly the same result is arrived at, the same means must necessarily be employed?

A. It seems to me that the same means must have been employed if the same result is arrived at.

XQ51. You say: "It seems to me," "I believe." I am speaking to a chemist, to some one who has
941 studied a very exact science, and I would like to hear him expound it with more accuracy.

A. I would be absolutely certain if I knew the compositions of the two liqueurs. I could be absolutely certain. It seems to me that the moment —I am still using that expression "it seems to me" —that the moment that the result is the same the means employed have been pretty nearly the same.

XQ52. As regards the result, you tell me: "the same result has been pretty nearly obtained." In your testimony you said that that was your way of looking at it, because you had been present at
942 tastings; it follows from that, that according to you you state that the result is attained, specially by the liqueur of Mr. Cusenier, because the tasters considered that there was a "quasi-similitude" between that liqueur and that of the Carthusian Fathers?

A. Yes.

By Mr. Bonnet: I shall be careful to go back to that declaration later on.

By Mr. Kelly: I object to the word "quasi-similitude," that witness said that there was more than quasi-similitude.

By Mr. Bonnet: I would be very glad that the word "similitude" should be substituted for the word "quasi-similitude"; that would render the demonstration that I am going to make still more striking. 943

XQ53. Do you think, sir, that it is possible by the Sanglé-Ferrière method, a method of analysis by the index of iodine, to obtain a standard alcoholate, that is to say a well determined strength of essence, whatever may be the richness of the plant in essence. It is well understood that we are dealing here with an alcoholate containing only one essence. 944

A. If the alcholate is prepared with a single essence, the same essence, is it not?

XQ54. That is the hypothesis which I am considering.

A. Yes, suppose we have a bottle of essence of mint, as an example. We put different quantities of it in alcoholic solutions—is that the way you want it—

XQ55. I am going, if you like, to illustrate it—Yes, I am opposed to all ambiguity. I am going to illustrate my question by an example. I have mint in a sufficiently large quantity before me and I am going to manufacture an alcoholate having a fixed strength in essence of mint. For this purpose I put into the alcohol—let us say two grammes of essence of mint previously prepared, and I find out by the Sanglé-Ferrière method the figure that corresponds to that alcoholate. Would it be possible to afterwards make an alcoholate of a fixed strength with the first determination which I have just made? 945

A. The essence and the plant being the same?

XQ56. The essence and the plant being the same.

A. Yes, under those conditions an exact determination could be made.

946 (Mr. Kelly asks stenographer number of question in order to refer to same.)

By Mr. Rocques (Witness): The essence and the plant, being the same, I mean the essence obtained from that plant.

XQ57. Yes, sir.

A. We are thoroughly agreed.

XQ58. I wish all the same to remind you of the question put by Mr. Kelly as he put it to you. It is well understood that Mr. Kelly has corrected it. But I take the testimony and I read it just as it stands. Mr. Kelly asks you: "Then cannot be
947 employed usefully?" I beg your pardon, Mr. Kelly, it is not that question that you have corrected.

"Then can the Sanglé-Ferrière method be "employed usefully in order to obtain every "year a standard essence of given flower?"

By Mr. Kelly: What is the number of that question?

By Mr. Bonnet: No. 44. Answer: "You "mean to say a plant or a flower being given, "can one, by means of the Sanglé-Ferrière
948 "method have a solution, an alcoholate, al- "ways containing the same quantity of es- "sence." Question: "Yes." You reply: "Well, yes, that might perhaps be useful, "evidently, but I think that it is still by the "help of tasting together if need be by this "index of iodine, that a more exact result "could be obtained."

A. Yes, because I was considering plants, mint for example, but different mints, that is how the question was put. Mr. Kelly said to me: "Mint of this year and of next year—"

By Mr. Bonnet:—— 949

By Mr. Kelly: I ask that the witness should be allowed to finish his reply.

Mr. Rocques (Witness): It seems to me that the question was put under the following conditions: With the same plant—that is understood—the same kinds of plants, but plants not absolutely identical, of different origin, can a standard alcoholate be made? No, because the essence of those plants is not entirely—

950 XQ59. Here is the question put, according to the stenographer: "Then can the Sanglé-Ferrière meth-"od be employed usefully in order to obtain "every year a standard essence of a given flower?"

A. Yes. That which precedes related to plants, to the same plants, but of different origins, we were considering that set of ideas then. Now, if you like I will take back all that and say this: When a given plant is taken, as in the examples you gave me just now, one can evidently by the determination of the index of iodine, say that there is so much per cent. of essence, but if one takes plants of the same nature, but of different origins 951 and years, one cannot by the determination alone of the index of iodine obtain exactly the proportion of essence, because the essence has not exactly the same constitution in those cases. That is really my idea. I do not know whether I have made it clear now.

XQ60. You tell me, sir, that the essences vary every year; how are these variations rendered on the reaction in the Sanglé-Ferrière method?

A. Oh, they are very considerable, considerable.

XQ61. Will you tell me what are the differences?

A. Oh, yes, there are considerable differences.

952 I am sorry that I have not brought, since it is a question of figures, a note which these gentlemen have published, in which figure a sufficiently large number of essences, but the difference between the quantity of iodine absorbed by two essences of the same nature but of different origin or age, may vary at least 20 per cent., it seems to me even more. If you have the figures before you you are better posted than I am.

XQ62. Yes, I wish, moreover, to remind you of them. We are speaking of the method of analysis of absinthes, that you know, by Messrs. Sanglé-Ferrière and Cugniasse, page 54. I see—and it
953 was to this that I referred—essences of different years, for example the essence of anise: Russian anise, 1901, 1 gr. 417—Russian anise, more than 10 years, 1 gr. 397.

A. That is magnificent, but there are others.

XQ63. Can you let me know what they are?

A. Will you lend me the book. I have not the figures in my mind, you know, I must look at them. (The witness takes the book which Mr. Bonnet hands him.) Here is hyssop, hyssop of Paris, of 1900, which has 990 as index of iodine—I state it in milligrammes, that does not matter, and here is
954 hyssolp of Paris, very old, which has 716; here is hyssop of Provence, 1900, which has 548, there is a difference of almost as much again; those are very large differences. And here is one, hyssop of Provence, which is very old, which has 477, you see we have there almost a difference of as much again; those are very important differences. In absinthe (wormwood), look here is absinthe which has 873, and here one which has 457—You own that those are not figures which have an absolute precision—

XQ64. Did those essences have the same origin?

A. Ah, I do not know, we shall see. Look, shall we keep to the absinthe?

XQ65. I put the following question. I assume the same hypothesis that Mr. Kelly assumed at the last examination. He said to you: "Then can the Sanglé-Ferrière method be employed usefully in order to obtain every year a standard essence of a given flower?" I wish to know if the differences are noticable as regards essences of the same origin but of different years— 955

By Mr. Rocques (witness): Notice that the—

By Mr. Bonnet: And I should like you to take as much as possible essences which do not differ too much between them in regard to age, for you must know that essences oxidise with age and that consequently in that respect the reactions may be singularly falsified. If you could, if you have sufficiently experience to inform me, show me and give me figures for essences of the same flowers, of the same plants, but in which the difference of age should not be more than one or two years, you would then understand the conditions of the problem which interests me, for I do not hesitate to affirm that one can every year, with scientific methods, constitute an alcoholate of the same standard as that of the preceding year. 956 957

A. We will look at the figures, but in the first place I ought to say that I do not think there is a sufficient number of documents in order to reply to the question you put to me. Nevertheless we will examine them. Now, I take the principle I examine what you have just said, being granted that the plants furnish an essence which is not of an invariable composition, you know, of which the elements may vary from one year to another.

958 All authors recognize that, acknowledging that an essence of a well determined origin has not necessarily every year the same proportion of constituents, it is evident that if the constituents have varied the index of iodine, which is a function of the whole of these constituents, has also varied. From the practical point of view I tell you; we are going to examine the figures, but I do not believe we have there sufficient information. There was more information in the note I published in the "Annales de Chimie Analytique" and which Mr. Sanglé-Ferrière has published—but as I have not got it here I take the other.

959 XQ66. In any case you see the hypothesis which I ask you to assume?

A. I reply to you: in principle I do not believe that it would be exact, seeing that the constitution of the essence might vary from one year to the other.

XQ67. I want to know the limit of that variation?

A. I tell you we are not sufficiently informed thereupon, but we are going to look. For anise I see nothing which can inform us; we must take the same origin. There is Russian anise of 1901,

960 there is also some of more than ten years, that does not reply to your question. For "badiane" (star anise)—there is Tonkin badiane of two different years—There is not sufficient information in that to reply to your question.

XQ68. After that we will continue our examination if you like. I go back to your reply where you say that the Sanglé-Ferrière method may be useful, but you add "I think that it is still by the "help of tasting, together if necessary, by this in-"dex of iodine, that a more accurate result can "be had." Mr. Tièche, manager of the liqueur factory of Mr. Cusenier has stated to us that he

only had recourse to tasting to find out the composition of Chartreuse. This is the passage: 961

Q60. And you arrive at this conclusion that the taste is the only means of analyzing at your disposal?

A. And many others also, for liqueurs.

Q67. Will you let me know the means at your disposal?

A. There is not any existing to my knowledge. You proportion your essence, you have composed essences you are not able to isolate them.

Q68. You have just said that some means of analyzing are at your disposal? 962

A. I speak of the taste.

I afterwards put a question to Mr. Tièche, I asked him if he knew the Sanglé-Ferriere method, he replied that he did not. In your opinion, do you consider that the declarations which Mr. Tièche made being given, it would be possible for him by tasting to get to know the composition of the liqueur?

A. For my part, I think that is the best way of working.

XQ69. According to you, then, tasting is the best way of working? 963

A. I think so.

XQ70. You told us moreover, page 3, that your opinion—it was about Chartreuse—was based especially upon the numerous tastings that you had made or had seen made. This is how you express yourself in this part of the examination:

You are asked: "Q13. What were the imitations which were the nearest to Chartreuse according to you?

A. It seems to me that Bonal was one of those which were pretty near it.

964 Q14. Was it near enough to be confounded sometimes by tasters? (I read textually.)

A. Oh, yes, I have seen them confounded it many times.

Q15. By known tasters?

A. Well, yes, in fact by people who were competent, who knew the matters well.

It results from what you have stated to me and from the passages of the testimony that I have just read, that in your opinion tasting dominates everything, and that when a liqueur of a complicated composition is concerned it is especially to that that recourse must be had?

965 A. I think so.

XQ71. To the opinion of Mr. Rocques, the witness, I wish to oppose the opinion of Mr. Rocques, the lecturer, and I ask you to reconcile the two opinions. You have delivered lectures at the Pasteur Institute?

A. Quite so.

XQ72. You were invited by Doctor Duclaux, Director of the Pasteur Institute, to especially give a lecture upon the rectification and analysis of spirits, and I acknowledge that no better choice could have been made—

966

By Mr. Rocques: You are too kind.

By Mr. Bonnet: In the journal "La revue Générale de Chimie Pure et Appliquée," of Joubert, your lecture is reproduced. On page 89 I read in the chapter devoted to tasting the following: "Tasting is the com-"plement of chemical analysis. The indi-"cations obtained by analysis on the one "hand and by tasting on the other hand, "mutually complete each other, and from "the whole clear conclusions can frequently "be drawn. An alcohol may be declared

"pure by analysis and be contaminated by 967
"traces of an essential oil which makes it
"lose its market value, and which the smell
"and the palate immediately reveal. Tast-
"ing reveals the presence in very small
"quantities of substances which, at the pres-
"ent time, cannot be ascertained by the
"chemical method. Tasting is performed
"in the first place on the alcohol itself, then
"on the alcohol with luke-warm water
"added; it is by this last method that one
"best perceives the odours good or bad,
"which permit an alcohol or a spirit to be
"judged. Tasting assumes much more in- 968
"terest when it can be comparative, that is
"to say when one can taste simultaneously
"many samples and possess standards of
"comparison. What is called neutral alco-
"hol is that which gives the smell and the
"taste no other impression than that of
"ethylic alcohol; it is principally when the
"alcohol has been diluted with luke-warm
"water that the absolute neutrality can be
"judged of. The Swiss Government, which
"always does the analysis and the tasting
"comparatively allows that if the search for 969
"the co-efficient—."

I presume "d'impuretés" (of impurities) for there is a misprint there, and "des périodes" has been put—

By Mr. Rocques: It is a misprint, as a matter of fact.

By Mr. Bonnet:"—by the chemical and "physical method suffices, tasting must be "employed for the appreciation of rectified "alcohols."

I have reproduced textually the passage which at first sight seem to agree with the

970 opinion you have just expressed: I continue:

"Although tasting gives valuable indica-
"tions which the expert should take into ac-
"count he should not accept these indica-
"tions without certain caution. The taster
"establishes his conclusions upon personal
"and fleeting appreciations. Two tasters
"may not find the same taste in two spirits,
"while two chemists will find the same anal-
"ytical result. It happens that a 'trois-six
"(3-6) that chemical analysis finds of bad
"quality on account of its impurities is con-
"sidered good by an experienced taster. We
971 "know of cases where fine Three-sixes, to
"which have purposely been added a rela-
"tively large quantity of earthy products,
"have been classed as being of good quality
"by experienced tasters. Mr. J. Pierre had
"six or seven competent persons taste two
"samples of a same alcohol of very good
"taste, of which one was pure and the other
"contained one or two and even up to three
"per cent. of propylic alcohol intentionally
"added. The opinions were very divided,
"and the majority of the tasters gave the
972 "preference to the impure alcohol. The na-
"ture of the impurities has moreover a great
"influence on the organo-leptic characters.
"In small proportions certain impurities,
"such as aldehydes, the others, communicate
"to 'Three-sixes' an agreeable odour, and
"amylic alcohol on the contrary in a small
"proportion gives a disagreeable taste."

I wish to know if that is still your opinion?

By Mr. Kelly: Before replying I ask that the pamphlet in question be put in the hands of the witness, that he may have the time to peruse it.

By Mr. Rocques (witness): I remember it sufficiently. 973

By Mr. Bonnet: I am going to hand you the number of the Review which contains this lecture.

A. I was dealing with the analysis of spirit, you know, and my opinion has certainly not changed as to the importance of tasting in that analysis. The case is not the same, it should be said, when speaking of a liqueur, which is a product infinitely more complicated than a spirit. In liqueurs you have to consider the presence of a very great number of essences, which constitute the 974
bouquet of that spirit, and under those conditions tasting assumes an importance much greater still than it has for spirits.

XQ73. Therefore, in your opinion, the more complex a composition, the more does tasting give certain results?

A. It gives results which are the more interesting, as there are no other means of control.

XQ74. Does it give in the presence of a complex product, very complex, a result more certain than in the presence of a less complex product?

A. Tasting never gives results of an absolute 975
certainly, that is what you wish to make me say, what you desire I should say.

XQ74a. I wish to make you state your way of looking at it.

A. It is really about that set of ideas that you wish that I should inform you? The result is not mathematical, evidently.

XQ75. You told us just now that by tasting you could make an analysis?

A. I think that was not quite what I meant to say. I meant to say: when one wishes to prepare an alcoholate, the best way, in my opinion, is still tasting.

976 XQ76. Do you think it is possible to make the analysis of a liqueur by organo-leptic means by tasting?

A. I think it is rather easier to make it by that means than by analysis which gives nothing.

XQ77. But do you think that an analysis can be made by tasting?

A. I think so in the particular case of a liqueur.

XQ78. Of a complex liqueur?

A. Of a complex liqueur; there is only that way.

XQ79. A liqueur is composed of alcohol, it is composed of sugar, and it is composed of a number
977 of essences?

A. Certainly.

XQ80. You come to this conclusion that, as a certain difficulty is experienced in tasting alcohol alone, one experiences more facility in tasting, with a view to analysis a mixture in which there is not only alcohol but also a very great number of essences?

A. But, I think it is much easier to taste the essences than the alcohol; it is much easier to taste the alcoholate which has a very pronounced aroma than a spirit which has a very delicate aroma. The
978 smell plays a much greater part in the question of essences than in the question of alcohol.

XQ81. Are there not amongst essences some which have aromas much more pronounced than others?

A. Evidently so.

XQ82. When you have a great number of essences in solution in alcohol, do you think that tasting can make the distinction between the different composing elements qualitively and quantitatively?

A. When an essence is tasted, an alcoholate or a liqueur—in fact it is the same thing—without

any information, it is evident that the first impression of the alcoholate does not give precise information. It indicates that such a body appears to dominate. But when one makes—in a liqueur factory one makes various alcoholates, comparisons, mixtures that are tasted in turn, under those conditions, the taster succeeds in forming an opinion. It is not at the first attempt that he perceives in a liqueur all the essences which are contained in it; it is by a prolonged experiment. 979

XQ83. And in your opinion—I desire to have your opinion very clearly—and in your opinion by all these multiple experiments tasting will give the qualitive and quantitative composition of a liqueur containing large number of essences? 980

A. That?—I do not think you could ask that much of a taster.

XQ84. Do you know if by analysis it is possible to determine the nature of the alcohol used in a liqueur?

A. H'm—Yes.

XQ85. Do you think it is always easy to determine whether it is alcohol of wine or commercial alcohol?

A. I think so, unless the wine alcohol has been completely rectified and rendered consequently identical with commercial alcohol. 981

XQ86. Shall we state it precisely?

A. Certainly.

XQ87. Wine alcohol is distinguished from commercial alcohol by this fact; that the wine alcohol —It contains at least 300 thousand of non-alcohol—If you like we will keep to the figure of 250.

A. Put no figures at all if you like.

XQ88. That is to give the idea, if you prefer it.

A. It is very variable; the alcohol may be more or less rectified. At any rate it contains some non-alcohol, volatile essences which give the bouquet.

982 XQ89. Suppose that by rectification the contents in non-alcohol of wine alcohol be considerably lowered. Would one, in the present condition of science, he authorized to say that that wine alcohol is still a wine alcohol, or would not one be authorized in stating that it was a commercial alcohol?

A. When one deals with an alcohol which has a very low proportion of non-alcohol, the chemist is only authorized in drawing two conclusions; either it is wine alcohol rectified in an imperfect manner or it is a mixture of wine alcohol and commercial alcohol—neutral—not even commercial.

983 XQ90. But he cannot say this is surely and solely wine alcohol?

A. Ah, he cannot affirm it.

XQ91. Is it possible to determine the nature of sugar employed in a liqueur, cane sugar or beet sugar?

A. No, it is the same thing.

XQ92. What, it is the same thing?

A. Both are saccharose obviously pure.

XQ93. There is an interest, I suppose, in a business, to know whether it is cane sugar or beet sugar. I address Mr. Rocques, the chemist, and ask him whether there is a method by which they

984 can be distinguished?

A. I do not think there is one, I would not undertake to do it. I mean pure sugar, naturally.

XQ94. In your opinion is it possible to make the analysis of a liqueur containing many essences and determine qualitatively and quantitatively those essences?

A. No.

XQ95. What is your opiinon, sir, on the methods of analysis which are used by the Municipal Laboratory? You have been there?

A. I have collaborated there, I think them very good; I think they are the best in the present con-

dition. Evidently they might be improved, we are trying to perfect them. 985

Redirect-interrogatories by Mr. Kelly:

Q1. One of the witnesses produced by the opposite side—I think that it was Mr. Dubonnet—stated it was impossible to make Chartreuse without knowing the secret of the Carthusians. This the sense in which I made use of the word "secret," in that sense of the identity between the liqueur now manufactured by Mr. Cusenier and the liqueur formerly manufactured by the Carthusian Fathers at La Chartreuse, can there be a secret? 986

By Mr. Bonnet: I make an objection, I do not know of any witness who stated that there was identity between the liqueur of Mr. Cusenier and the old liqueur of the Carthusian Fathers.

By Mr. Kelly: I will ask Mr. Rocques then to choose what word he likes to indicate the similarity which exists between the liqueur of Mr. Cusenier and the liqueur formerly manufactured by the Carthusians at La Chartreuse. 987

A. I think that the moment that—that is the opinion that I have expressed, which moreover is perhaps personal—that when you get identical products there is no secret.

RDQ2. Do you know a book published: "La Fabrication des Essences et des Parfums," by Mr. Durvelle?

A. Durvelle? I do not know it.

RDQ3. I read you the following extract, page 19:

988 "Amongst the primary ingredients for the "extraction of essences, flowers, leaves, "fruits, herbs, stems, wood, roots, &c., there "are many which cannot be preserved and "must, consequently, be worked in the fresh "state. Such are especially the most pe- "culiarly delicate flowers, such as orange "flower, roses; they must be gathered at a "stated time of the day, generally before "sunrise and distilled immediately; if you "were to keep them in a heap they would "soon begin to ferment and the essence "would be destroyed wholly or in part. You
989 "can, it is true, preserve the perfume of "these sort of flowers by salting them and "packing them in casks, but the perfume al- "ways loses some of its delicacy and is not "the same thing as the fresh flower.

"There are plants which stand drying per- "fectly well, but they always give an es- "sence of better quality if they are distilled "in the fresh state, as for example pepper- "mint. There may be a reason for drying "in as much as it brings about a decrease "of the amount of water, but this advantage
990 "does not appear to compensate for the loss "of quality which results. Finally a great "number of plants may be dried and pre- "served a long time without alteration, "which allows them to be carried to a dis- "tance for the extraction of essences.

"As may be seen there is no general rule "for the method of preservation of aromatic "plants; it is necessary to know the char- "acter of each and to act accordingly."

Does this extract express exactly for you the fact as concerns the use of plants in the fresh state and in the dry state?

A. Yes, I think that expresses it very well. 991

RDQ4. Do you know a book of Mr. Labbé, entitled "Des Huiles et Essences, Huiles Essentielles."

A. Yes, I know that one.

RDQ5. On page II, where he gives the amount of the essence of peppermint, he remarks that the German plant when fresh furnishes from 0.1 to 0.25 per cent., where as when dry the amount given is 0.5 to 1.5 per cent. Is that nearly exact?

A. Yes, that seems to me to be nearly exact.

RDQ6. Does that show or no that according to Mr. Labbé the mint is used to make the essences in the dry state or in the fresh state? 992

A. Yes, it is used in a fresh state or in the dry state; that depends upon the region and all sorts of things.

Mr. Kelly asks the stenographer read questions and replies Nos. 55 and 56 of the cross-examination.

RDQ7. When you asked the question: "The plant and the essence being the same?" did you mean to say of the same origin, or of the same year, or what? 993

A. I meant to say—Mr. Bonnet said to me: "Here is a lot of mint, I distill a part of it and I "determine by this distilling how much essence "there is in this plants." I afterwards take the same plant and make an alcoholate." Then I said: "Under those conditions the essence that I have extracted, and of which I can take the index of iodine and the essence which exists in the alcoholate are the same, because I can by determination of the index of iodine have with precision exactly the proportion of essence." But naturally if I started from a given mint and from a given essence,

994 for another essence, that would no longer be true.

RDQ8. Would the index of iodine be conclusive as regards plants of different years?

A. The index of iodine would be variable, it would not be identically the same.

Recross-interrogatories by Mr. J. Bonnet:

RXQ1. If the plants upon which one worked, or rather if the essences upon which one worked had a difference of age of one year, what would be the difference shown by the method of index of iodine?

A. The same essence older ?

995 RXQ2. Yes, a year's difference, the same essence?

A. I cannot give you the figures.

RXQ3. You do not know what importance the difference would make?

A. I have made no experiments on the subject. I do not think that Mr. Sanglé-Ferrière has made any either, I know nothing about that. That would have an influence, what is its importance? I know nothing about it.

RXQ4. You also said just now that the moment you get to make identical products there is no secret. I again put to you the same question as 996 just now. What do you understand by secret?

By Mr. Kelly: I make an objection. I was very precise in my question as to what I understood by "secret" and it was in accordance with the explanation I gave to the word "secret" that the witness replied. I ask consequently that the witness should reply with the same definition of the word "secret," that is to say with the definition given by the witness produced by the other side.

By Mr. Bonnet: The request of Mr. Kelly was too clear for you to experience any difficulty in answering me in that sense. 997

A. I own to you that I cannot find the exact signification, all there is to be done is to take the definition of the dictionary, which will be better than mine. I accept it.

RXQ5. Do you know whether in the Chartreuse of the Carthusian Fathers there is any orange flower?

A. I know nothing about it.

RXQ6. Do you whether there are essences of roses? 998

A. I know nothing about it.

RXQ7. Do you know whether the Carthusian Fathers use certain fresh plants?

A. I believe so, according to the information which has been given me. I do not know it personally, I have made no personal experiments thereupon.

RXQ8. What is this information which has been given you?

A. Different persons engaged in the essence trade in the manufacture of liqueurs.

RXQ9. Who are these persons? 999

A. That is fixed in my memory without remembering the name.

XAVIER ROCQUES.

1000 Session of Tuesday, May 1st, 1906, at 2 p. m.

Present: Parties as before.

Examination of Mr. RAPHAEL-CARBONNEL.

RAPHAEL-CARBONNEL, of Paris, France, distiller of essence, aged twenty-five years, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. Edmond Kelly, representing the defendant:

1001

Q1. What is your name?

A. Raphael-Carbonnel.

Q2. Your age?

A. 25 years.

Q3. Your profession?

A. Distiller of essences.

Q4. Your residence?

A. Paris and Vallauris.

Q5. Where is your distillery?

A. At Vallauris, Department of Alpes Maritimes.

1002 Q6. Have you more than one of them?

A. Yes, we have a branch at Montauroux, for mint, exclusively for essence of mint.

Q7. Which is your principal establishment?

A. Vallauris, it is the head establishment.

Q8. When did you establish a distillery at Montauroux?

A. About 22 years ago.

Q9. Why did you go to Montauroux?

A. Because those are the plantations of mint, are they not; the plant that grows at Montauroux is particularly remarkable from the point of view of the fineness and even of the produce of the es-

sence, it was to our advantage to go to this place. 1003

Q10. To produce essence of mint do you use the plant in a dry state or in fresh state?

A. In a fresh state.

Q11. Up to what point is it fresh?

A. For instance, mint, you see, besides it is like all the plants that we distill, the plant is picked at night from 6 to 8 o'clock, the evening before, it is put in bundles at once, comes to the factory in the morning from 4 to 5 o'clock, and begins to be distilled immediately.

Q12. Is it indispensable to distill in a fresh state?

A. I do not know, we have never distilled in a 1004
dry state. It is probable that that would also give essence. But I suppose that that must be less good all the same since one always distills in a fresh state.

Q13. At what time of the year do you pick the mint?

A. In the month of August; between August and September. Distillation is commenced from the 15 to the 20 of August, according to the years, the sun, the ripeness of the plant.

Q14. Is the mint the same every year, or does it differ from year to year?

A. The mint plant? 1005

Q15. Yes.

A. It differs, like all plants, from the point of view of the produce in essence—Thus according to the years, for instance, in mint, the average by Kilog. of essence, is from 550 to 400 kilo. of plants, according to the years, for the kilo. of essence. Now at Montauroux it is always better by half; the average is always about—we have nearly always 350 to 400 kilo. of plants for one kilo. of essence. At Vallauris more are necessary because the plants of Vallauris, although it is not far, are

1168

1006 less good as to concentration, and also as to bouquet, as to fineness.

Q16. Do you make other essences besides essence of mint?

A. We make essence of mint, also that which we make most, we make essence of neroli and of orange flower, in the order, of their importance, essence of small seed, which is essence of oranges leaves, essence of geranium, essence of lavender, a little essence of myrtle, and then we make essence of fruit stones also, that is to say, it is another process, it is not by distillation. Then we distill fruits also, the cherry—and the raspberry, then
1007 we make laurel-cherry water by distilling laurel leaves. That is all.

Besides, if you will allow me—essence of rose, a very little of it is made naturally, because that is distilled for water. That is all there is interesting.

Q17. Does essence of neroli differ from year to year?

A. Ah, yes, essence of neroli, there are years we have more fineness, according to the years, that must be attributed above all to a question of sun.

Q18. What effect has the sun?

1008 A. It has the effect that it yields a better harvest; for instance, a flower which will have received much sun, which will be very ripe, which will even be ugly to see—it is like dust—that one will give an excellent yield with 800 kilo. of flowers we have one kilo. of essence, whilst when the flower remains in bud and grows in cold quarters, 1,000 or 1,100 kilo., sometimes 1,200 are necessary for a kilo., and in this case this flower, under a less burning sun, gives a much finer essence.

Besides, at Paris, at a certain moment, the flowers of gardens were distilled, of Verseilles gardens in particular, very fine essences were obtained,

thus it is certain that the neroli of Verseilles is very fine, just as with us it is finer than in Spain, because there is less heat. 1009

Q19. Where do you obtain the orange flowers to make the essence?

A. The orange flowers come in an extremely circumscribed place; it comes for instance between Antibes and Cannes, never further than Cannes, that is to say, on the sea shore, that is little, perhaps in all 10 kilometres, and it runs into land, not much. It is cultivated in terraces at the Golfe Juan, that is the great centre, and there are some places above Grasse which yield some, because they are exposed to the South, that allows the orange tree to be cultivated, but all that comes exclusively in the region of the Alpes Maritimes. 1010

Q20. Does the orange flower differ according to the place where it is cultivated, even in those regions?

A. Well, it is a question of exposition, you see, The orange flower which comes in very hot places is very different as to the amount it yields and as to fineness. Thus, at Vallauris we have cold quarters at least what are called cold quarters; the cold quarters give a bad enough yield of essence, but an essence evidently much finer.

Q21. That is to say that the yield is less, but the bouquet finer? 1011

A. The bouquet is finer, certainly, we perceive it when we distill, we know it; that is seen from the flower; it (the flower) is discerned at once, it is less ripe, less yellow, more beautiful, in this case the essence is finer. Naturally, we mix one with the other, we do not make two qualities.

Q22. You say that Montauroux gives flowers?

A. Mint plants, at Montauroux only mint is made.

Q23. Where do you make orange flower?

1012 A. At Vallauris.

Q24. At—?

A. Vallauris.

Q25. It is here at Vallauris itself that you reap orange flowers?

A. All those that we distill come, certainly, only from estates at Mallauris and at Golfe Juan.

Q26. Does a difference exist between the flowers of Vallauris and the flowers of Golfe Juan?

A. Oh, that, you know—Vallauris, it is precisely there that the cold quarters are. The Golfe Juan is an extremely well exposed part, the flowers are more recent, or at least earlier, thus at the Golfe
1013 Juan the flowers are distilled immediately, they are going to commence these days, whilst the quarters of Vallauris, exposed to the cold, are a fortnight late; it is the only difference.

Q27. Do the flowers differ in fineness, the flowers of Golfe Juan and of Vallauris?

A. They differ, you see, I repeat it; the flowers of the cold quarters give finer essences, but we do not make a difference, it would not be practical commercially, we never sell neroli saying: Here is neroli that comes from the flowers of the cold quarters and another from the slopes of the Golfe Juan, we make an average (communelle) of all that.
1014 Besides, this difference between the fineness is only appreciable for fine essences like neroli, which is a very mild and fine essence.

Q28. You say that the flower of the Golfe Juan gives a bigger yield, but a finer perfume?

A. Ah, no, rather less fine.

Q29. Less fine than the flowers of Vallauris, which give a lesser yield, but a finer bouquet, do they not?

A. Good, exactly.

Q30. What is the distance between Vallauris and the Golfe Juan?

A. It is the same country.

Q31. What is the distance? 1015

A. There are two kilometres, they have the same railway station, it is the same country.

A. On what does the superiority of the mint of Montauroux depends?

A. Well, it depends on the plant in itself, for the same mint plant transported. The origin of mint plantations is Montauroux. We have here a question of soil, like for wine, a plant from Montauroux transported to Vallauris, or more exactly, to Villeneuve, the same plant of mint from Montauroux brought to Villeneuve, grows very tall, like this—whilst the mint of Montauroux remains quite low, even perfectly ripe. 1016

Q33. Will you indicate the difference by centimetres, rather than by gestures?

A. Well, wait—let us see—let us say 50 centimetres—

Q34. Fifty centimetres for which place?

A. At Montauroux, it would be mint which would not exceed 50 to 60 centimetres, whilst Villeneuve gives mints which are nearly a metre high. We do not distill—we always say that we only distill the top of the plant, but what is brought is distilled, and those of Villeneuve contain many branches which yield less than the current mint, and which give a less fine bouquet. Montauroux has a finer bouquet, a sort of taste—it is a question of soil. It is a question of soil, the mints of Montauroux are discerned by the smell from those of Villeneuve. 1017

Q35. Does that depend on the soil or on the altitude?

A. Oh, that—I think rather a—the difference is so marked that I rather think it is a question of soil, because the altitude, I have never thought much over it—since the same plant, once it is transported to Villeneuve, no longer gives this good

1018 taste of Montauroux, it is because there is a question of soil. Not only it no longer gives this taste, but transported to Villeneuve the same plant gives a bad average as to the yield in essence. At Montauroux, when there are 400 to 425 kilos., it is said to be a bad yield, whilst for Vallauris, if we could be assured each year that we would have 450 to 475 kilos. we would be very happy. No, there is a question of soil here.

Cross-examination by Mr. J. Bonnet:

XQ1. Do you know the plants employed by the
1019 Carthusian Fathers for the manufacture of Chartreuse?

A. Not at all.

XQ2. Do you know how they treat the plants to make Chartreuse?

A. It is probable that they make infusions, I do not suppose that they employ essences.

XQ3. Have you some precise indications on this subject?

A. From the point of view of the dealer in liqueurs? None.

XQ4. Do you know if the Carthusians use the mint in a fresh state?

1020 A. I do not know. My place is pretty far from the Chartreuse.

XQ5. Do you know if the Carthusians use lavender, myrtle, orange flowers and neroli?

A. We have never had orders from these houses, from the Chartreuse, you see, for essences.

XQ6. Then you do not know if they use them?

A. Ah, I do not know.

XQ7. You declared a moment ago, sir, that it was only for certain very fine essences that a difference could be remarked, according as the plant which produced them was more or less exposed?

Mr. Kelly: I object; the witness did not say that. 1021

Mr. Bonnet: Will you, sir, reply to my question, and correct an error, if by chance I have just committed one?

A. You were saying that I said that a same plant according to the altitude, according to the exposition—

XQ8. You said, did you not—presently I shall ask the stenographer to read it—I think that you said that a certain plant could give essences more or less fine, according as it was more or less well exposed? 1022

A. I said it particularly of neroli.

XQ9. Yes, and you added, if I am not making a mistake, that it was only for certain very fine essences that this difference was observed?

A. Oh, yes, we say it especially from the point of view of neroli, it is the reflection that we make every year; we say: This year the neroli is finer than that of last year. Among our customers it is also said: This year you have good neroli, but it is always the same essence.

XQ10. Could you express this opinion for all sorts of plants in general? 1023

A. When a plant—for instance, I suppose mint, since in our specialties it is neroli and mint, for mint we are not led to this reflexion because it has a very strong smell. Thus, a plant of mint: Here are two essences of mint which differ distinctly, for instance, naturally, according to where they come from, if they come from distant countries, like the mint of Japan and the mint of the country, we would say they do not resemble each other. But from the point of view of two mints of the country, the smell is so strong, and, after all, the basis must always be the same, it would be difficult

1024 to say: Last year the essence of mint smelt stronger than that of this year.

XQ11. I thank you, for your reply superabundantly proves that my question did not necessitate an objection.

You further added, and you will correct me if I am making a mistake, that you mixed all the plants, that you mixed—given a plant—that you mixed the flowers of this plant or the stalks, or the leaves, in a word, all that you treat, without troubling to treat first those that were well exposed and then those less well exposed?

A. Yes, we could not do it.

1025 XQ13. You could not do it. Conclusion—the product that you obtained was a product which was the result of the distillation of all these plants, no matter what their exposition was. I take an example, mint, or if you prefer, let us again take this flower which gives a particularly fine bouquet, the neroli. Well, I presume that you do not distill separately the well exposed neroli, you mix them with the other neroli less well exposed, and you distill the whole?

A. That is to say that at the factory, we receive on an average, in the heavy reception of the month

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of May—we distill 10 to 15,000 kilos. of flowers a day. This is brought to us at present by a syndicate, since they have formed a syndicate, the proprietors who deal with the flower. Formerly we had our proprietors, two years ago, since two years they form a syndicate, which brings us the flower —some flower. They do not say to us: Here are flowers from the cold quarters, and there flowers from the hot quarters; they bring us 10,009 kilogs.; we distill the mixture. They do it at their depots, the syndicate possesses depots. 1027

Mr. Bonnet: That is all I wished to know.

The Witness: Two years ago we had our proprietors, there were the proprietors of the hot quarters, and the proprietors of the cold quarters, it was easy to settle the limits, it interested us. 1028

XQ13. At present you do not do it?

A. At present we receive the flower from the syndicate, we distill it.

XQ14. Without making a distinction between the flowers of the hot quarters and those of the cold quarters?

A. That would be difficult for us—we would have to ask in order to obtain it. 1029

XQ15. Is it really what you call a "communelle?" You used this word.

A. Yes, a "communelle" of flowers, you see.

XQ16. You said that the finest mints were those of Montauroux?

A. Montauroux.

XQ17. Do you know if the Carthusians use this mint?

A. I do not know at all. When I speak of fine mint, it is a somewhat personal, I say the finest mint I speak of our place. I say the finest be-

1030 cause there is some in the South of France at Vaucluse, in the Alpes Maritimes, at Montaureux, those of Montauroux are the finest. I do not oppose them to the English mint, we do not produce it; it is possible that at—there are plants that are finer.

XQ18. If a mixture is made of different essences in alcohol, do you think that by tasting it is possible to recognize them? I suppose that twenty essences are put in alcohol, do you think that tasting would allow you to recognize individually each essence?

1031 Mr. Kelly: I object; the witness is not qualified as a taster.

Mr. Bonnet: Will you reply to my question.

A. Yes, that is the business of a dealer in spirits. I do not know.

XQ19. You cannot reply?

A. I do not know.

XQ20. Are you a supplier of the Cusenier establishment?

A. I have business relations with the Cusenier establishment.

1032 RAPHAEL-CARBONNEL.

Session of Monday, May 14th, 1906, Opens at 2:15 1033

by examination of Mr. Alexandre Millerand.

ALEXANDER MILLERAND, of No 2 Avenue de Villiers, Paris, France, aged forty-seven years, attorney at law, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. Kelly, representing the defendant:

Q1. What is your name? 1034
A. Alexandre Millerand.
Q2. What is your age?
A. Forty-seven years.
Q3. What is your residence?
A. No 2 Avenue de Villiers, Paris.
Q4. What is your profession?
A. Counselor at law at the Court of Appeal.
Q5. Are you also a member of the Chamber of Deputies?
A. I am also a Deputy.
Q6. Have you been a Cabinet Minister?
A. Yes.
Q7. Minister of Commerce? 1035
A. Minister of Commerce.
Q8. Under what Ministry?
A. Under the Ministry of Waldeck-Rousseau.
Q9. At what period?
A. From 1899 to 1902.
Q10. Are you counsel for Mr. Lecouturier?
A. Yes, for some of his affairs.
Q11. Have you had occasion to argue for him before the Grenoble Court?
A. Yes.
Q12. Will you tell me the proceedings that took

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1036 place to your knowledge so far as concerns the mark of Chartreuse?

A. The proceedings in which I was engaged were as follows: Mr. Lecouturier was appointed by the Court of Grenoble Liquidator of the unauthorized congregation of the Carthusians. He then asked the Tribunal to be put in possession of the property detained by the unauthorized Congregation of the Carthusians. This was opposed by Mr. Rey, a Carthusian, who claimed as his personal property notably the business, together with the appurtenances and dependencies thereof. I then argued before the Tribunal of Grenoble that Mr. Rey, as
1037 well as his predecessor in the functions of Procureur of the Congregation, Mr. Grèzier, was an interposed person, and that in reality it was the Congregation which possessed same through him. The Tribunal decided in our favour, and rendered a judgment, by the terms of which it declared that Abbé Rey, Procureur of the Congregation, was an interposed person, through whom the Congregation of the Carthusians possessed notably the business, together with its appurtenances and dependencies, especially the marks. Consequently it decided that the business, with all that went with the
1038 same, should be included in the property to be liquidated, and consequently it ordered Mr. Lecouturier, in his capacity of Liquidator, to continue the liquidation. This judgment was attacked before the Court of Appeal at Grenoble; I argued before the Court of Appeal as I had argued before the Tribunal, and the Court of Appeal affirmed the judgment.

Q13. Did Mr. Lecouturier apply to the Tribunal of Grenoble to obtain authorization to have the mark of the Chartreuse abroad transferred?

A. As a matter of fact, I did not argue that case; I believe it was Mr. Sarrant, my collabora-

tor, who argued for Mr. Lecouturier. He asked 1039
the President of the Tribunal, in Chambers, for an order authorizing him to take possession, by virtue of the judgment which had declared that the business and the marks were the property of the Congregation—he asked for authorization to enter into possession of the trade- marks abroad. The President of the Tribunal, if I remember rightly, signed an order in that sense, against which the Procureur, Mr. Rey, the Congregation of the Carthusians, appealed, and the Court of Appeal, by a decision of December, 1905, reversed the order signed by the President of the Lower Court, upon a question of procedure, and without passing upon 1040
the merits.

Q14. Upon what was the decision of the Court of Appeal based?

A. The reason for that decision was, as I have just indicated, purely and simply a question of procedure. Mr. Rey, in his conclusions, had pleaded that the President of the Tribunal at Grenoble had exceeded his powers as a judge in Chambers in passing upon the question which had been submitted to him relative to the marks abroad. The Court of Appeal adopted this point of view, declared the demand inadmissible, and consequently, as I have just said, set aside, non- 1041
suited the Liquidator in his demand, not on account of a consideration of the whole case, but for reasons of procedure, because in its opinion, it was not before the President sitting in Chambers that the motion ought to have been made.

Q15. Before whom ought the motion to have been made?

A. The Court of Appeal did not expressly state. It may be inferred from the findings themselves that the Court of Appeal considered that it was a

1042 question which ought to have been brought before the Tribunal.

Q16. The entire Tribunal?

A. The entire Tribunal, and not before the President sitting in Chambers.

Q17. Was there an appeal lodged against this decision of the 12th December, 1905?

A. I do not know whether there was an appeal taken to the Court of Cassation.

Q18. No, to the Court of Appeal?

A. It is the decision of the Court of Appeal that I have just referred to.

Q19. Did this question come again before the
1043 Court of Appeal?

A. The question came again before the Court of Appeal in the following form: I did not argue. Mr. Lecouturier petitioned the Court of Appeal of Grenoble for an interpretation of its decision by which it had affirmed the judgment declaring that Mr. Rey was an interposed person. Mr. Lecouturier said to the Court of Appeal: "But in deciding by your affirmance of the judgment of the Tribunal of Grenoble that the business and all the appurtenances and dependencies, notably the trade-marks, were the property of the Congregation of the Carthusians, you have by such decision held
1044 that the foreign trade-marks constitute appurtenances and dependencies of the business. Since a doubt has arisen on this point, I ask you, by the interpretation of your decision, to state the above fact explicitly." The Court replied: "We do not consider that there is any cause for interpretation, and we non-suit you." There again, as in the preceding decision, as in the decision of 1905, in this decision of March, 1906, the Court did not pronounce, did not give judgment on the whole case, but has upon a question of procedure purely and simply avoided the request for interpretation which had been submitted to it.

Q20. (Mr. Kelly passes a document to the witness): Can you produce the pleadings of Mr. Rey on that occasion? 1045

A. Yes, here they are; must I read them?

Q21. The part in which we are interested.

A. "Conclusions brought forward for Abbé Rey defendant in the matter of the interpretation of the decision rendered by the first Chamber of the Court of Appeal of Grenoble, July 19th, 1905.

"Whereas—said Abbé Rey—the first question raised by the Liquidator's request is to know whether the demand is admissible in the form in which it is introduced.

"As a matter of fact there can be no doubt, as precisely stated by the Court of Appeal of Grenoble in its decision of December 12th, 1905, but that the claim of the Liquidator to the marks registered above involves the question of the application abroad of a law of police and a question as to the distinct character of such foreign marks, which might have a special and independent existence, or be but an accessory to the Fourvoirie business. 1046

"That this claim had not been advanced either "in first instance or before the Court of Appeal at "the time of the Judgment of 23rd of April, 1904, "and of the decision of July 19th, 1905, nor was any "allusion made to same in the arguments. 1047

"That the silence of the decisions of the Courts, "both in the motifs and in the dispositif could "not be explained if these questions had been "raised, for the serious interests involved, the im-"portance of the principles at stake, and the dif-"ficulties which their application presents, would "have attracted the attention of the magistrates, "who would by logically deduced findings, have "justified otherwise than by silence a solution "which cannot at present be deduced from their de-"cision.

1048 "That it is therefore certain that the Tribunal "and the Court of Appeal had no intention of set- "tling a question which had not been discussed, "and it is not admissible to ask for the interpre- "tation of a decision, which by its 'motifs' and "its 'dispositif' leaves no room for interpretation, "but which purposely avoids passing upon the ques- "tion which it is claimed was judged.

"That, whereas Mr. Lecouturier so well under- "stands this that he asks that there may be added "to the 'dispositif' of the decision, 'that the assets "of the liquidation include not only the marks "registered in France, but also the marks regis-
1049 "tered abroad,' which would necessitate the ren- "dering of a new decision.

"That this inevitable consequence of Mr. Lecou- "turier's demand shows that he ought not to have "proceeded by way of interpretation, for it has been "decided that nothing can be interpreted unless "there is need of interpretation, and that under "pretext of interpretation nothing can be changed "in the 'dispositif' of a decision rendered.

"For it is certain that in now asking, by way of "interpretation, that the decision of July 19th, "1905, should cover a question that the Court did
1050 "not intend to pass upon, and that a clause be "added to the decision and not merely an interpre- "tation, which involves no modification of the de- "cision, from this point of view the demand of Mr. "Lecouturier is inadmissible, he being allowed, "however, to have recourse to all means which he "may deem advisable in order to have a decision "rendered upon the question that has not been "passed upon."

It is, therefore, quite true, as I indicated, that Abbé Rey did not plead upon the merits any more in 1906 than in 1905, and that he confined himself to asking the Court of Appeal to set aside the de-

mand of the Liquidator, Mr. Lecouturier, on a question of procedure, because the demand had not been presented before the proper judge. The Court of Appeal adopted his conclusions, and it is therefore quite true that neither the decision of 1906 nor the decision of 1905 passed upon the merits in so far as concerns the title to the foreign marks of the Carthusians. 1051

Q22. Can you produce these conclusions themselves or will you produce a copy?

A. I believe that the conclusions themselves can be produced.

By Mr. Kelly: Because I shall have to annex them to the Commission. 1052

By Mr. Millerand (witness): This is a true copy, it will suffice to have a copy made, I can annex this one.

By the Commissioner: I request you to sign it.

By Mr. Millerand: Simply a signature?

By the Commissioner: Yes, without any other indication.

(The conclusions of Abbé Rey are signed by the witness and marked Exhibit No. 11).

Q23. The decision of the Court of Appeal may be divided into two parts: a series of paragraphs which commence with the words "Attendu que—" (Whereas). 1053

By Mr. Bonnet: Which decision?

By Mr. Kelly: The decision of the Court of 1906. And afterwards a paragraph which commences with "Par ces motifs, la Cour sans s'arrêter," etc. (For these causes, the Court, without considering—&c). Have the two parts of this decision the same legal value?

1054 A. Certainly not. The deciding part, and which from the point of view of the interests at stake and of the question to be decided, is the only effective part, is the "dispositif." The "motifs" are arguments which have evidently some interest because they emanate from the Court, but which have only a relative value, in the first place because, as the Court says in another decision or in this one itself, it may happen that they have not even been discussed at the bar. Whether they be the personal ideas of the Court or emanate from one of the parties, they are arguments which have the authority of the Court that pronounces them; they have
1055 not the value that the "dispositif" alone has, which, itself, is the decision which settles the litigation. The "motifs" are a discussion.

Q24. Can the "motifs" be quoted as having the value of res judicata?

A. Certainly not.

Q25. Then it is only the paragraph which begins "Par ces motifs"?

A. That is where the "dispositif" begins and the commencement of the issue decided.

Q26. Was it not under and by the Waldeck-Rousseau Ministry that the law of 1901 on associations
1056 was voted?

A. It was as a matter of fact that the Waldeck-Rousseau ministry which brought forward and had voted the law of July 1st, 1901.

Q27. Did you assist in the making of that law?

A. In the first place I assumed, as a member of the Government which introduced and discussed such law, the responsibility of the law. I have no need to say that I entirely adhere to it. I may add that, naturally, as it was one of the most important laws—it was the most important that the Waldeck-Rousseau ministry had voted—I was particularly interested in it, that I followed the dis-

cussion closely, and that I knew through the discussions in Council the preparation of the law. 1057

Q28. Can this law be qualified as a law of circumstance? ("Loi de circonstance").

A. I think that is a phrase which it is very natural to use in political controversy, and that it is very natural that the political adversaries of the law of 1901 should qualify it in that manner. I believe there is no qualification more inexact; it suffices, moreover, to remember under what circumstances it was introduced to see that no law was less a law of "circumstance" than that one. Mr. Waldeck-Rousseau had, in fact, occasion to recall in the course of the discussion that the principles 1058 of the law, its essential provisions had been brought forward by him in 1883, in opposition to other Bills, notably one introduced by Mr. Jules Simon. Consequently the law which the Waldeck-Rousseau ministry introduced in 1901 was not only not a law of circumstance (loi de circonstance), but was on the contrary a law which for a long time past many Republicans and especially Mr. Waldeck-Rousseau considered as necessary, apart from all circumstances. It is, moreover, a law which by its very object escapes that criticism, for its title, which it amply justifies, is "Law relating to contracts of association." It is the law which estab- 1059 lished in France the right of liberty of association.

Q29. Will you explain the conditions under which that law was passed?

A. They are as follows: Since, I may say, the foundation of the Republic, to go no further back, a law was demanded which should do away with the provisions of the Penal Code which the Empire had introduced, which the monarchy had maintained, and which suppressed, and prohibited in the most complete manner liberty of association, for if 20 persons—more than 20 persons, consti-

1060 tuted a society without the permission of the authorities, they committed an offence punishable by the penal law. It had therefore long been demanded that a law should be passed similar to the laws which in 1881 and 1882 had established the liberty of the press and of meetings, by instituting the liberty of association. On the principle it self there was no disagreement in the Republican party, and I may say in political parties. There was one question which separated the partisans of the liberty of association. This question, to speak only of this one, the only one which interests us at present, and which was by far the most deli-
1061 cate and most serious, was the question of congregations. It was a question of ascertaining whether the law which instituted liberty of association, a law which I repeat was quite the reverse of a *loi de circonstance*, which was not only an organic law, but which in America, for instance, would certainly have deserved the title of constitutional law and would have been prepared and voted with the procedure special to constitutional laws—well, this organic law, which deserved the name of constitutional law, was going to institute liberty of association. Should it set apart, or rather should it provide a special regime to be applied
1062 in the case of congregations? A certain number of Republicans, amongst them was Jules Simon, whose name I quoted just now, were of opinion that there was no distinction to be made—I should say no precaution to be taken—and that it sufficed to proclaim purely and simply liberty of association without any other provisions.

On the contrary, the immense majority of the Republican party, and amongst that majority, in the ranks of that majority, Mr. Waldeck-Rousseau, considered that congregations should be kept in mind, but he did not intend—and I reply thus to

the reproach that has often been made and is still made to the law of 1901—he did not mean to make a régime apart for congregations: he meant, on the contrary—and this replies to the qualification of law of exception, law of circumstance, which has been applied to the law of 1901—he meant, on the contrary, to apply to congregations the rules of common law and the very principles of the civil code; and in the very remarkable speech which Mr. Waldeck-Rousseau delivered during the general discussion of the law of 1901 he endeavored precisely to show clearly which were the principles of common law, the articles of the civil code, that he applied to congregations. He said—this is a phrase that he used all through the discussion of the law—the Civil Code provides for a certain number of objects which are not and cannot be marketable. Well, among these objects which are outside of trade, which cannot be made the object of a contract, there are, for instance, the capacity to possess, the capacity to alienate, the right to marry. Now when a congregation is constituted, its characteristic is to impose on the members of the congregation, under the authority of a Superior, renunciation, by the vow of chastity, by the vow of poverty, by the vow of obedience, of a series of rights which are precisely rights which cannot be the object of a contract. Nobody has the right to renounce his own free will, no one has the right to bind himself never to marry. Mr. Waldeck-Rousseau even said, I believe, that to make an engagement never to marry a given person would be null, all the more so then an engagement never to marry; and the engagement to place one's inclination and free will in charge of a third party is likewise a contract which is absolutely null and unlawful. Therefore in stating that congregations are associations outside common law we do not

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1066 establish against them an arbitrary tyrannical and vexatious régime devised for them; we simply and purely apply to them the regulations which, by virtue of common law, are applied and are applicable every day to all citizens.

Consequently by *providing for* Congregations, by devoting to them a series of paragraphs in the law of 1901, the legislator of 1901 did not intend in any way to institute an exceptional law for congregations, but to have common law applied to congregations and their members.

What I have just said applies to the members themselves of congregations and to their connec-
1067 tions, and is no less exact from the point of view of the property of congregations.

The strong term "confiscation" has been pronounced with regard to the law of 1901; it is quite unjust and inexact. As a matter of fact, what does the law of 1901 say? It only puts into an article of law principles which the French public law has always applied, and which, to say the truth, cannot be unrecognized in any civilized State, I believe. The law of 1901 declares, after all our old law, after our revolutionary law, after even the laws of Restoration, that a Congregation can only hold rights so long as it is authorized
1068 and recognized, and that an unauthorized congregation is as though it did not exist. What does the law of 1901 mean to say from the point of view of existing congregations and their property? It says this: We are going to regularize the situation of unauthorized congregations. There are in France—it is a state of things nobody can deny—a certain number of unauthorized congregations, although they have not by law any kind of property they in fact hold, none the less, through persons interposed, a certain quantity of personal and landed property; and one of the political reasons,

which I leave on one side, which precisely rendered 1069
the law of 1901 a necessity, was that property, absolutely irregular, which existed in the hands of the congregations, had increased in formidable proportions since 1848—when Jules Grévy denounced it from the tribune of the Legislative Assembly—up to our time. Well, the legislator of 1901 said: An irregular situation exists which it is indispensable to regularize: what are we going to do? All unauthorized Congregations will be compelled by the promulgation of the law, to solicit authorization, without which, both under the old as under the new law, they cannot exist. If they obtain authorization they acquire a civil personality and 1070
are capable of holding rights; they are regular associations, we have no longer to consider them from the point of view of the law concerning associations.

If, on the contrary, not one, or a certain number amongst them do not solicit authorization within the three months, or if having solicited it they are refused it, what will be the situation? This is what the situation will be: We wish to regularize an irregular situation, it is therefore necessary that having pronounced the dissolution of unauthorized congregations, which is legally pro- 1071
nounced by the fact that either the congregation has not solicited authorization or that the authorization has been refused—the actual situation of fact must be regularized.

I take the congregation of the Carthusians. Here is a congregation which is unauthorized, which is not capable of holding rights, of being an owner. As a matter of fact, however, it holds in its possession personal and landed property. The authorization is refused to them, and therefore the members ought to separate; and there are from this point of view a certain number of provisions,

1072 from the point of view of the dissolution itself and of the separation of the members of the congregation. And then, at the same time as we dissolve the members of the congregation, separate them, it is necessary to provide for the liquidation of the property. And—I say this as a parenthesis and as a historical indication —in doing this the legislator of 1901 was certainly enlightened by the example of 1880. At that time congregations were expelled by decrees. At that time the dissolution of congregations was begun, in that the members were by force—legal and regular force—obliged to separate. But as this was not followed by the liqui-
1073 dation of their property the following singularity happened and must infallibly have happened: that is to say, the property remaining coagulated—if I may use that expression—little by little the members of the unauthorized congregations returned, re-united, and resumed, as a matter of fact, the direction and administration of the property which had not been liquidated; and the intention of the principal author of the law of 1901, which is found in many instances in the course of the debates, is that the dissolution of congregations will not be an accomplished fact—unauthorized congregations, of course—until the liquidation of the property
1074 shall have followed the separation of the persons. But was it intended by that to confiscate the property? It suffices to read the law of 1901 to perceive that it was not so.

What does Section 18 say? Section 18 says that the Liquidation must take place according to the rules that it lays down. It says that the members of a congregation may recover the property they possessed before entering the congregation, the property which has been given to them or of which they have become legatees. It allows under certain conditions, donors or their heirs, when gifts

made have not been bestowed on a charitable institution, to reclaim, under certain conditions, and within a certain period, the property given by them; all of which provisions, I scarcely need to demonstrate, are precisely the reverse of confiscation. Moreover, when these measures were taken, and they are precisely those taken by the Liquidator, for his rôle consists in dividing the property of the congregation, or rather the property found in the possession of the congregation, amongst those entitled thereto; when these first transactions are done, when they are finished, when the different law-suits have been tried, what does the Liquidator do? He divides the balance of the property, the balance of the liquidation, amongst those entitled thereto. 1075 1076

What are "people entitled thereto"? At one time —that was one of the propositions made and then rejected—it was said: The State will take what remains of the liquidation, or rather it will take the total and ensemble of the property of the congregations. This proposition was put aside, and it was said: "No, Justice will divide amongst those entitled thereto the balance of the property liquidated. Who are the persons entitled thereto? They are not only those of whom I have spoken, who shall have presented claims and whose claims have been acknowledged, they are moreover the members themselves of the congregation who, by virtue of the law, are entitled to pensions, which are paid to them out of the balance of the liquidation. Consequently, what the legislator wished was in the first place to apply to members of congregations the common law, and afterwards apply common law to the property unduly described as such, of the congregations. He appointed—he intrusted the Tribunals with the appointing of liquidators whose whole duty consists in dividing according to the 1077

1078 regulations of Section 18, amongst those entitled thereto, all the property which unduly belonged through persons interposed, to unauthorized congregations, which, I repeat, by their very essence, cannot be owners.

Such is, very briefly and imperfectly summarized, the general character of the law of 1901, both as concerns persons as well as property.

If I am allowed to add one word I will say, for one must be just and try to see things from both sides, that if the adversaries of the law of 1901 describe this law as a law of confiscation, a law of exception, this is explained by the political cir-
1079 cumstances amidst which it was voted and which had rendered it, I will say, necessary. There is no doubt that the law of 1901 in its provisions relating to congregations was necessary solely from the point of view of a good management of the State itself, and that it was a spectacle which could no longer be tolerated, that of these large associations which existed in the State against all rule. It is no less true, and this explains the animosity and the passions which were aroused in connection with the voting of the law of 1901, that its passing was, I will not say provoked, but certainly has-
1080 tened by the political circumstances amidst which it was brought forward. It is certain, in fact, that the action of certain congregations, of these monks that Mr. Waldeck-Rousseau described in one of his speeches as "rebellious monks" and "business monks": the Assumptionists, for example, the publication by them of exclusively political newspapers, the preponderating action which certain congregations had taken even in State affairs in connection with the War Department, which extended even to the nomination of officers, action which appeared in an acute form in educational matters: all these phenomena of a political order, which

reached the highest point at the time of the Drey- 1081
fus affair, were, it cannot be doubted, the causes which hastened the voting of the law of 1901. But, if we must not forget them in order to explain how the law of 1901 was voted, it should not be forgotten either that these circumstances were but accidental and external circumstances, and that the law of 1901, as it was voted, is, I repeat, a law which does not raise the idea of either a law of exception or of a law of circumstance. It is, on the contrary, the application of the most ancient and most certain principles of our law. It is, above all, the law which promulgates and which assures liberty of association, and in so far as it 1082
concerns congregations it does but apply to them, to their persons and property the principles themselves of common law.

Q30. You said that the congregation of the Carthusians had an irregular situation at the time of the drawing up of the law of 1901. Can you remember at what period the situation of the congregation of the Carthusians became irregular, and in consequence of what law?

A. But, if I remember rightly, it has never ceased to be irregular. The congregation of the Carthusians has never been authorized and consequently it has never been a regularly existing con- 1083
gregation. There have been, moreover, in France since the Revolution, only five authorized congregations, the names of which are known, and never has the congregation of the Carthusians appeared amongst them. The congregation of the Carthusians has always been an unauthorized congregation; it has been like the others, a congregation tolerated in fact, but it has never had the legislative authorization, either given by the law, the Chambers, or, as in the case of some of the congregations of which I have spoken, the

1084 authorization given by an Imperial decree, equivalent to a law. Never has the congregation of the Carthusians received under any form the necessary authorization, and if it has been treated as an unauthorized congregation in virtue of the law of 1901 it is because, having solicited authorization, which moreover was to explicitly acknowledge that it did not have it, this authorization has been refused.

Q31. And it was to regularize an irregular situation that the law of 1901 was voted?

A. It was—and I am very glad of the question, because it permits me to fill up a blank in my ex-
1085 planations of just now, already much too long—it was, in fact, to regularize an irregular situation. But I particularly want to remark that there is an indispensable distinction to be made between the law of 1901 and the application which has been made of it. I have not here to explain myself—that is outside of our province—as to the question of whether a too extensive or a not sufficiently extensive application of the law of 1901 has been made. The truth is that—it is a public fact—when Mr. Waldeck-Rousseau had the law of 1901 passed, and he explained himself about it later, he thought it would not be suitable to apply it
1086 immediately to all the congregations, and it was precisely because this application was made to all the congregations that we have seen accusations brought against the law of 1901, which were all the more earnest and passionate as it applied to more congregations.

But—be it said by the way, for it has some interest—we must not judge the provisions of the law of 1901 by the application which has been made of it. The law of 1901 was made to allow the government to give, if it judged proper, authorization to such or such congregations, but in any

case to oblige all congregations to regularize their position with the law. But unauthorized congregations, and especially the congregation of the Carthusians, were not in conformity with the law. It recognized that itself in soliciting authorization, which was, rightly or wrongly, refused, and consequently it is an unauthorized congregation. 1087

Q32. What is a trade-mark in French law?

A. Well, a trade-mark, if I rightly remember the definition of both the Courts and Pouillet, is the material means of guaranteeing the production or the origin of a product to third parties, in whatever place or in whatever hands that product may be found. 1088

Q33. Can the trade-mark be separated from the manufactured article that it serves to identify?

A. Theoretically that has been maintained, and it may in fact be imagined that under given circumstances the trade-mark may be separated from the product, but there is no doubt that in the immense majority of cases the trade-mark—this results from the definition of the trade-mark—is closely bound to the proprietorship of the product, since the trade-mark, as I have just said, is the material means of guaranteeing the production or the origin of the product. Whoever has the product must naturally and necessarily have the material means which permit the public to be certain that it posseses the authentic product; consequently, as a fact, in the most general and common manner the proprietorship of the product and the proprietorship of the mark are, by definition, inseparable. 1089

Q34. The sale of a factory "*in invitum*," does that include the sale of the trade-mark?

A. For the same reasons, yes. Whether the sale takes place willingly or whether it takes place by means of dispossession, or by the effect of a law

1196

1090 like that of 1901, the same reason which always causes—it may be said always—the proprietorship of the trade-mark to go with the proprietorship of the product will result that when a product is sold, even by judicial decision, the sale of the trade-mark will accompany the sale of the product and pass into the same hands.

Q35. Can you quote any decisions on this question?

A. There is a decision, sufficiently well known, the date of which escapes me,—it is easy to find it—relating to the firm of John Arthur, and there is a decision which is also quoted, and of which
1091 in my opinion, excessive usage has been made, concerning the match monopoly. At that time in fact, an action was brought in which the question of the foreign trade-mark was raised, but the real question at issue was solely the following:

Had the French State when buying out the private match companies, understood that it acquired the ownership of the trade-marks abroad? Well, as the Ministers of Finance successively declared, the French State had no interest in that, and having no interest, it had, on the contrary a counter interest in not acquiring the ownership of a trade-
1092 mark abroad which it would have consequently to pay for, and of which it would not be able to make any use. The object of the French State in expropriating the match companies was purely and simply that in the future the manufacture of matches should be a manufacture of the State or a manufacture "en Régie," but it is evident that the French Government could only carry out that object within the limits of its own territory, and it was quite indifferent as to whether the match companies which were expropriated kept their trade-marks abroad. Not only was it indifferent to the Government, but it would have committed

a fault against its own finances by wishing to pre- 1093
vent the expropriated companies from preserving abroad their trade-marks, for by forbidding them to make use of trade-marks abroad, which moreover it was certain it would never use, it placed itself under the obligation of paying an indemnity for this reason. Consequently the decision is absolutely outside of our case.

Q36. That case is the decision in the matter of the Compagnie Génèrale des Allumettes versus Caussemille & Cie., is it not?

A. That is so.

Q37. And is to be found in Sirey, 1882, 1st Part, page 9? 1094

I take the liberty of reading an extract:

"Considering that the monopoly is to be confined "within the limits of French territory, the manu- "facture and sale of chemical matches in all coun- "tries outside of France remain as before under "the protection of industrial and commercial lib- "erty; that the expropriated manufacturers had "therefore the right and interest in retaining, in "view of the industry which they might transfer "abroad, the property and use of their trade-marks "and commercial names, whereas the French Gov- "ernment or the grantee company could not in- "voke the privilege of the monopoly in order to in- 1095
"clude same in the expropriation of the factories; "that if, as authorized by the conditions of the "concession, this company, besides working its mo- "nopoly in France, engaged in the sale of chemical "matches abroad, its business can only be carried "on in conformity with the principles of common "law which admit of free competition at the same "time as they protect commercial and industrial "property.

"Considering that it is in this sense that the law "of August 2nd, 1872, was officially interpreted

1096 "and applied; that the Compagnie Gènèrale, by a "letter of March 28th, 1875, pointed out to the Min- "ister of Finance that it appeared indispensable "that in the expropriations which were to take "place in the State be specially recognized as the "owner of the symbols and commercial marks of "the manufacturers; that on the 22nd of April "following, the Minister, Mr. Léon Say, replied "that insofar as the trade-mark was concerned it "appeared to him to constitute a commercial prop- "erty which might be exploited not only in France "but also abroad and that the State could only ap- "propriate same within its own territory, adding
1097 "that the foreign market should be completely beyond "its action and remain open to all the companies "which were dispossessed on account of the estab- "lishing of the monopoly; that in a second letter "of May 9th, 1873, the Compagnie Gènèrale re- "newed its claim supported by more lengthy expla- "nations, claiming even that it had received the "most distinct assurances that the French Govern- "ment formally stipulated in the Acts of expropri- "ation that the entire ownership of the trade-marks "was acquired by it and would prohibit the use of "same by the expropriated parties both in France
1098 "and in foreign countries; but that on the follow- "ing 16th June the new Minister of Finance, Mr. "Magne, after having referred in his reply to the "preceding decision, explained that he, like the "company, thought that the law of August 2nd, "1872, had placed the owners of the trade-marks "under the impossibility of making use of same in "France, but that this law and the conditions of "the concession had not destroyed the faculty "which the manufacturers had of making use of "same abroad; that finally from the point of view "of the law and equity the State could not and "should not exact the transfer of the commercial "marks of the factories of chemical matches.

"Considering that it is in conformity with and 1099
"following upon theses ministerial decisions that
"the expropriations have been carried out by the
"State and the indemnities settled

By Mr. Millerand: That is so.

Mr. Kelly: "either by mutual consent with
"Causeville & Co., or by the Jury with the Roche
"and Victor Four Companies; that the objects to
"be expropriated being rigorously determined by
"the law, by the decrees of right of transfer and
'the judgments of expropriation, the representa-
"tives of the State, its agents, had neither capacity 1100
"nor power to exact, propose or accept that the
"expropriations be extended, as well as the cor-
"responding indemnities, beyond the limits which
"were legally assigned to them; that moreover, as
"a matter of fact, it in no way appears from the
"terms in which the mutual agreement and the de-
"cisions of the jury are worded that upon the de-
"mand of one or other of the parties and by their
"mutual consent, the expropriations and mutual
"indemnities for all causes of damage may have
'included, besides the buildings, stock and ma-
"chinery, and the suppression of the industry, the
"disposition and attribution to the expropriating 1101
"State or to the exploiting company, of the trade-
"marks and commercial names of the expropriated
"manufacturers; that it is shown on the contrary
"from the memorials which these latter have pub-
"lished in support of their demand for indemnity,
"that their right of manufacture and sale abroad
"was reserved to them as well as the ownership and
"use of their names, marks and symbols, it being
"however, the obligation of the State to indemnify
"them for the suppression in France of an indus-
"try which they could not transfer abroad except

1102 "at great expense and under less favourable con-"ditions."

Am I to understand from this recital of facts that the ownership of the right of manufacture and sale abroad was specially reserved when the sale was effected to the State in execution of the law of expropriation?

A. That seems evident to me, and that moreover results from the very nature of the matter. The State bought from the match companies as little as possible, it bought from them what it had need of, that is to say, their right of manufacturing and their marks in France. Not only had it no inter-
1103 est in buying the marks abroad and prohibiting the use of the marks abroad, but it had an interest in limiting the amount of the indemnity due by excluding from the indemnity, and consequently from the working, the marks outside of the country.

Q39. Do you remember whether the case of John Arthur, which you cited, is indicated under the title of John Arthur versus Comptoir Commercial et Immobilier, and is it to be found in Dalloz, 1893, Volume I, page 124?

A. Quite so.

1104 Cross-interrogatories by Mr. J. Bonnet, representing the plaintiffs:

XQ1. I wish to put a few questions to you, Mr. Millerand; I have not been able to take many notes during the course of your very interesting pleading, I did not know, in fact, before coming here, the questions which were to be put to you; but still, I have been able to retain a few, I have been able to retain a few points, and it is on these points which I desire to cross-examine you.

At the time of the passing of the law of 1901, were you the Minister of the Interior?

A. No, sir, the Minister of Commerce. 1105

XQ2. You have given us an analysis of the decision of March 27th, 1906, rendered by the Court of Grenoble, and if you like, I am going to repeat the analysis which you gave, for I believe that it is incomplete.

A. If you like, I could indicate in one word what I meant to say.

By Mr. Bonnet: I am going to have your deposition read over, and I will complete same by reading one or two "considerants."

(The stenographer reads questions and replies No. 13, 14, 15 and 16, of the direct-examination). 1106

By Mr. Millerand: It is not that.

XQ3. No, I am going to try to complete it. You have given an analysis of the decision of March 27th, 1906, of the decision which was rendered upon the demand for interpretation of the decision of July 19th, 1905, and the analysis which you have given does not seem to me to reproduce quite faithfully the spirit of the decision. I would like to read to you two "considerants" of the decision:

"That the claim of the Liquidator to the owner- 1107
"ship of the marks registered in foreign countries
"raises the question as to whether the law of July
"1st, 1901, which is a law of exception and of po-
"lice, applies or not to the property of dissolved
"congregations beyond the territory of the repub-
"lic, and whether the marks registered abroad are
"an accessory to the business of Fourvoirie, and
"thereby coming into the Liquidation, or whether
"they form property distinct and independent from
"this business.

"That this question has not been argued by the
"parties, that the Court would not have failed if

1108 "the matter had been submitted to it, to discuss "same in the 'motifs' of its decision in order to "pass upon it in the 'dispositif.'

"That its silence in this regard, exclusive of all "discussion on this point, does not permit one to "admit, as if implicitly contained in the decision, "under an ambiguous and equivocal form, the de- "cision of which Lecouturier claims the benefit, "and that the interpretation which he solicits of "the Court would have the effect of extending be- "yond what was its sole object, the issue decided "by the decision of the 19th of July last.

"That such demand should be set aside as being
1109 "inadmissible—"

You recognize, do you not, that the text I give you—though I have not a certified copy before me —is really the text of the decision?

A. It is in conformity with the copy I have here before me. If that is your question of this point, I would ask to be allowed to give an explanation.

XQ4. If you like—

A. On this point?

XQ5. That is all I had to read.

A. I ask permission to point out that what you have just read emphasizes what I have said. As a matter of fact, in the first of the "motifs" you read,
1110 the Court states that the claim of the Liquidator raises the question as to whether the law of July 1st, 1901—which is a law of exception and of police says the Court—governs or not the property of congregations. And the Court adds: "That this question has not been argued by the parties."

If I understand you properly you mean to make use—which is quite natural—of that part of the incidental phrase: "The law of July 1st, 1901, which is a law of exceptions and of police." I would simply point out that this question is decided not in the depositif, which is thus worded:

"The Court, without examining the demand of "Lecouturier in his official capacity, declares same "to be inadmisible." 1111

But that it is solely in a "considerant" that the Court gives an opinion which—I am permitted to say—would not perhaps have been given so clearly if the question had been argued before it. Consequently, I think I have the right to say that the Court has not decided and could not decide the question, the same neither having been submitted to nor argued before it, the question of knowing whether the law of 1901 is a law of exception and of police, and that consequently—in this lies my whole answer—it is impossible to make use of that word in order to conclude that the Court of Grenoble has decided that the law of 1901 was a law of exception. It was not called upon to pass upon that question, and it did not. 1112

By Mr. Bonnet: I may tell you, Mr. Millerand, that the interrogatories which are put in the American proceedings have nothing in common with the debates which take place before the French Tribunals. I might reply that the intention you gave me credit for in the question I have put to you is not that which I really had, for that would be to transform the examination into a discussion. He who examines according to the American procedure has not got to make known the object he has in view. It is for the discussion on this point. It is for that reason I do not desire to continue the discussion on this point. You have made an interesting declaration, it has been recorded, and I continue my examination. 1113

XQ6. You have told us, sir, in the course of

1114 your explanations, what was by the terms of the French law, by the terms of the Code of Civil Procedure, the distinction that must be made in a judicial decision, judgment or decree, between the motifs and the "dispositif," or between what is called the "attendus" and "considerants" and the part which comprises the decision properly speaking, and you appeared to consider with some scorn the "motifs" of a decision. Do not the "motifs" of a decision serve to throw light on the "dispositif?"

A. Sometimes, when the "motifs" correspond with the "dispotifs," but when, as sometimes hap-
1115 pens—it is an abuse which is complained of not only at the Civil Court, but more particularly in the Criminal Court—when the "motifs" are irrelevant to the "dispositif," it can be said that they have not the same authority as the "dispositif."

XQ7. Could one conceive of a judgment without "motifs?"

A. That would be contrary to all principles.

XQ8. Does not the Court of Cassation reverse decisions for insufficiency of "motifs?"

A. The Court of Cassation reverses decisions for insufficiency of "motifs," but I am not aware that it reverses them for abundance of "motifs," so
1116 that in the same decision "motifs" will be found which have reference to the "dispositif," and justify same, and others which are irrelevant.

XQ9. You have made a very interesting analysis of the law of 1901, and you have striven to show us that it is not a law of exception. You have told us of the conditions under which the Liquidation was made; do you mind if we take the case which interests us, the Liquidation of the Carthusians? After the Liquidator will have collected all the assets, after he will have sold the business and the trade-mark, after he has granted

pensions to those having a right to same, to whom will the balance of the liquidation go? 1117

A. That is a question that is still being discussed, and it has precisely been maintained, it was even maintained in the proceedings that what would remain of the liquidation should go to that society in fact which the congregation was. It is an opinion which I myself have always been against, and in a case which I had to argue before the Tribunal of the Seine, and where I had to examine the law as a whole, I gave the opinion, quite a personal one, but which I want to repeat here because it is a direct answer to the question you have put to me, 1118 that once having reached the residue of the liquidation under the conditions you have mentioned, this residue should be considered as property without an owner, which should on principle, by virtue of the principles of common law, go to the State. It is an opinion which is my own, but which is quite personal.

XQ10. Do you think, from the experience which you have had, that what remains of the liquidation will not be retained by the State?

A. That is very difficult to say. I confess, as a matter of fact, that I would not like to make a prognostic which might be contradicted by 1119 events, and in order to make it with certainty it would be necessary to know in advance the surrounding circumstances, political and social under which the termination of the liquidation will take place.

XQ11. The law, therefore, has made no rule for the apportionment, the attribution of this balance?

A. There was a very interesting and prolonged discussion from this point of view, at first in the Chamber, concerning the famous L'hopiteau amendment, and afterwards in the Senate, and the

1120 opinion which seemed finally to have prevailed was that it would be the Tribunals which, upon a final examination, would attribute the residue of the liquidation. Formal provisions for the attribution of the balance of the liquidation are not to be found in Article 18, and if I have arrived at the opinion which I made known to you just now, it is by a reasoning which I believe is just, which I believe to be an exact application of the common law, but there is not a clear passage in the law of 1901, which says:"Once all the pensions are paid, all actions brought and passed upon, the State, for instance, will take the residue of the liquidation."

1121 XQ12. Did you not argue on behalf of the Liquidator, before the Tribunal of Grenoble, in proceedings Mr. Lecouturier brought against the Union Agricola?

A. Yes.

XQ13. Was not the claim of the Liquidator that there should be attributed to him, or rather, that the marks of the Union Agricola should be declared counterfeits of the marks of Father Rey, and that the name of "Pères Chartreux" was a commercial name which belonged to him?

A. The question was not, naturally, so clear
1122 and so precise; in reality, the question was whether the Union Agricola had not counterfeited the marks of the Grande Chartreuse, and I argued notably, as I indicated to you, that the mark of the Grande Chartreuse was a mark which belonged to the business, which, consequently, was in the property to be liquidated, of which the Liquidator had the management, and of which he had to give an account, and that consequently the Carthusian Fathers, by appropriating this mark to themselves abroad, were committing the offense of counterfeiting. But the question did not touch upon the usurpation by the Carthusian Fathers of the mark

itself of the Grande Chartreuse, we simply discussed a mark which we claimed in certain ways was a counterfeit of ours. 1123

XQ14. The question which I put to you was, nevertheless, put exactly in the spirit of the answer you have given. I know that the question submitted to the Tribunal was simply as to whether the marks of the Union Agricola were counterfeits of the marks of Father Rey. Is the claim which you upheld before the Tribunal really a claim in which you agree? Do you personally share the opinion which Mr. Lecouturier developed in his conclusions?

A. I will ask your permission not to answer 1124 that question.

XQ15. Did not the Tribunal, in its judgment of May 18th, 1905, declare that the claim of Mr. Lecouturier was groundless?

A. Quite so.

XQ16. Was not judgment against Mr. Lecouturier?

A. Naturally.

XQ17. Did not Mr. Lecouturier file an appeal?

A. I do not know, I could not tell you, I think so, but I do not know.

XQ18. Did not Mr. Lecouturier discontinue after having lodged an appeal? 1125

A. It is possible.

XQ19. Mr. Sarraut, who pleads at the present time, you say, for Mr. Lecouturier, is he not your secretary?

A. Who pleads at the present time and who has pleaded for some time.

XQ20. And who has pleaded for some time?

A. He began at the same time as myself.

XQ21. Is he not your secretary?

A. Quite so, I indicated that. Besides, Mr. Sarraut is not the only counsel who pleads for Mr. Lecouturier.

1126 XQ22. In your opinion, Mr. Millerand, does the Liquidator hold his powers from the law or from the Tribunal?

A. He holds them from a decision of the Tribunal rendered by virtue of the law.

XQ23. That is a matter of fact what a Ministerial Circular of September 29th, 1905, says, which is to be found in the Work of Messrs. Trouillot and Chapsal, "Traité d'Interprétation de la Loi du Ier Juillet, 1901," page 474, and which formally declares that: "The Liquidator is chosen and appointed by the Courts, but he holds his powers in virtue of the law and not from the Tribunal, which
1127 can neither specify nor limit in any way his powers."

By Mr. Kelly: I object to that question, the book quoted not being before us.

By Mr. Bonnet: That would have been all the more difficult for me, as I did not know what questions you had to put to Mr. Millerand and I was not advised by you.

XQ24. Is the law of July 1st, 1901, a law of police and security?

A. Yes.

1128 XQ25. Is the law of July 1st, 1901, applicable abroad?

A. The question is a little too general.

By Mr. Kelly: I did not understand. Is it applicable—

By. Mr. Bonnet: Abroad. Is it applicable in foreign countries?

A. I make the same answer.

XQ26. Here is what the Circular which I quoted just now says, quoted by Mr. Trouillot, page 472, on the subject of the law of 1901:

"It is a law of safety and police, it creates obli- 1129
"gations or rights for the sole congregationists es-
"tablished in France. It cannot be applied to the
"members of congregations established abroad."

A. That is understood.

XQ27. The law of July 1st, 1901, the law of police and security which does not govern the persons of congregationists established abroad, does it govern the personal and real estate of congregationists established abroad?

A. The real estate situated abroad, I do not think so; the personal estate, which would be dependent on the property situated in France, that is another question. 1130

XQ28. Do you know the decisions rendered by the Tribunal of Grenoble against Mr. Lecouturier, and which declare that the law of 1901, does not govern either property or persons outside French territory?

A. No.

XQ29. There is a first decision, Bernard versus Baglin and Lecouturier.

A. I did not argue that case.

XQ30. Judgment of the Tribunal of Grenoble of July 2nd, 1904: "Whereas the law of July 1st,
"1901, governs neither property nor persons abroad 1131
"and cannot have treated any solidarity whatso-
"ever between the congregation residing in France
"and congregations residing beyond the frontier"

Another judgment: Bioret versus Lecouturier of 24th November, 1904: "Whereas the law of July 1st, 1901, governs neither property nor persons beyond the frontier—"

Nayroud versus Lecouturier, judgment of the Tribunal of Grenoble, of November 24th, 1904:

DeLézey versus Lecouturier, November 26th, 1904.

A. I would not like to expose myself, Mr. Bon-

1132 net, a second time to the reproach that you so politely made a while ago; nevertheless, I ask permission to remark that the decisions you have just read have, in my opinion, no interest or any importance from the point of view of the ownership of trade-marks abroad.

XQ31. We will come to that later on. Do you know of any decisions rendered either by French Tribunals or by foreign Tribunals which have derogated from this fundamental rule of private international law that laws of police and sefety are essentially territorial laws?

A. No.

1133

By the Commissioner: What did you answer?

Mr. Millerand: I answered no.

XQ32. As the law of July 1st, 1901—a law of police and safety, as these decisions declare—is not applicable abroad without making any distinction between the personal estate and real estate, and as the Liquidator, the Circular of the Minister of Justice specially says, holds his powers from the law, is it not logical to conclude that the powers of the Liquidator, especially those relating to
1134 the registration and renewing of the marks, do not extend abroad?

A. I believe the question to be very captious, but that is too general. Here is, for instance, a case where I do not think it can be denied that the powers of the Liquidator extend abroad: A sum of money, securities, belonged to, or rather was in the hands of a congregation in France. They go abroad, the Liquidator sues them there. From the fact that they have passed the frontier, do the powers of the Liquidator cease, and has he not the right to vindicate them, even in a foreign country?

There is no doubt in my own mind; not only has 1135
he the right, but it is his duty to vindicate them, even in a foreign country.

XQ33. Have the French Tribunals given a decision on a question of this kind?

A. I do not know of any.

XQ34. If I properly understood the explanations you gave a while ago, and if I have well understood the reservations you have just made to the question I put to you, in your opinion the law of 1901, although in principle not applicable abroad, would be applicable to the ownership of trademarks abroad?

A. I am very much inclined to believe so. 1136

XQ35. And this—I still refer to the declarations you made a while ago—because you consider these trade marks as an accessory of the business.

A. Yes.

XQ36. This principle, which tends to consider the trade marks as an accessory to the business—the trade marks abroad—is it so absolute that it permits the violation of the fundamental rule of the territoriality of laws of police and safety?

A. I do not see any contradiction between the two principles.

XQ37. You do not see any contradiction between the two principles? 1137

A. No.

XQ38. Is the accessory character of the foreign marks in relation to the French business an incontestable principle of French legislature.

A. I indicated a while ago that in a general way and in an immense majority of cases it seemed to me certain that the ownership of the trade mark went along with the ownership of the business; consequently I answer the question which you have just put that in the vast majority of cases I do not see how it would be possible, either in fact or in law, to separate one from the other.

1138 **XQ39. Do you not know of any decisions which have decided the question in an opposite sense to that which you have stated?**

A. Yes, there have been cases which I consider as exceptional and I think that in order to qualify them as it suffices to compile, in jurisprudence and decisions, the cases where precisely the ownership of trade marks has been set apart from the ownership of the business.

XQ40. Do you mind if we examine together a few of these decisions, isolated, as you call them, In the first place, you have made an analysis of the decision of the Court of Cassation of November
1139 **2nd, 1880, relative to the attribution of the marks used for the sale of matches at the time of the expropriation of the match factories. Does not the Court, in this decision, which you surely remember, say in a formal manner that the foreign mark can very well be separated from the business in France?**

A. I have not the details of the decision in mind, but I have the sense of it, and I am quite disposed to believe that the indication you give is quite correct, for the Court of Cassation, like the jurisdictions of which it had to pass upon the decisions, could only, in the case in question, and by separ-
1140 **ating the foreign mark from the ownership of the product.**

XQ41. In the analysis you made of this decision, you told us that the State had never wanted to claim the foreign marks, but do you know under what condition this dispute arose? Do you know that it was the companies which claimed them from the State? Do you know what it was the companies which claimed them from—

A. Another company.

XQ42. Yes, Caussemille, and do you know what is the interesting phrase of the decision relative to the claim of the two parties?

A. What I have just told you shows that I would be much obliged if you would quote the phrase. 1141

XQ43. Not knowing the questions which were to be put to you, you see in me a little hesitation, but I want to read you a passage of the decision save in subsequent interrogatories to specify its bearings.

"That, on the 22d April following, the Minister, "Mr. Léon Say, replied in so far as the trade mark "concerned that it appeared to him to constitute "a commercial property which could be exploited "not only in France, but also abroad, and that the "State could only appropriate same on its own "territory, adding that the foreign market should "be completely beyond its action and remain open 1142 "to all the companies which were expropriated on "account of the establishing of the monopoly; that "in a second letter of May 9th, 1873, the Company "Generale renewed its claim supported by more "lengthy considerations, claiming even that it had "received the most distinct assurances that the "State formally stipulated in the acts of expropria- "tion that the entire ownership of the trade mark "was acquired by it, and would prohibit the use of "same by the expropriated parties both in France "and in foreign countries, but that on the 16th of "June following, the new Minister of Finance, Mr. 1143 "Magne, after having recalled in his reply the pre- "ceding decision, explained that he, like the com- "pany, thought that the law of August 2d, 1872, "had placed the owners of the trade marks under "the impossibility of making use of same in France, "but that this law and the conditions of the con- "cession had not destroyed the faculty that the "manufacturers had of the making use of same "abroad * * *"

That is a passage which I wanted to bring out and compare with the explanations which you have given us.

1144 A. I thank you for reading this passage for it seems to me to prove—which supports the statement I made just now—that the Court of Cassation in its decision, based itself not at all on a general theory according to which the marks abroad would be independent of the ownership of the business, but relied, on the contrary, on the express terms of the law of expropriation, which was the contract made between the French Government and the match companies.

XQ44. We will together examine a few decisions and a few opinions of authors. In the 'Annales de la Propriété Industrielle" of 1890, page 288, Pan-
1145 dectes Françaises, Répertoire Trade Marks, No. 490:

"The lien which binds the trade mark to a business is therefore purely artificial and voluntary; it is the outcome of a tacit agreement, of a presumption of will. And this presumption, a contrary wish formally stated will cause it to disappear, restoring to a business and to the mark their independence relative to each other. The business man who transfers his business has therefore the choice of reserving for himself by an express agreement the personal use of his mark." Tribunal of Commerce of the Seine, May 24th, 1884.

1146 You find in Messrs. Lyon-Caen and Renault, in their treatise of "Droit Commercial," 3d edition, Volume III, No. 245, this page 182:

"A business is therefore not like an inheritance, "a universality of rights, an indivisable whole; it is "a universalité of facts or a union of corporeal or "incorporeal objects, united by the use to which "they are put, but susceptible, however, of being "separated one from the other."

A. I quite agree with the authors you have just quoted, and with the Tribunal of Commerce of the Seine. I believe, indeed, like them, that the lien

which binds the marks to the business is purely voluntary, and if the Congregation of the Carthusians, in possession of its trade marks, had wished to separate the trade mark abroad from the business I have no doubt but that it had the right to do so. But what, in my opinion, is inadmissible, is that the Congregation of the Carthusians, no longer being in possession of the business, and proclaimed by judicial decision dispossessed of this business and of its appurtenances and dependencies, should, after this decision, want to separate the trade mark from the business. It could have done so before, it cannot do so afterwards. 1147

XQ45. To express the opinion or the opinions which you have expressed since the beginning of the examination, have you consulted the judgments which have been rendered abroad against Mr. Lecouturier on the subject of the trade marks of the Chartreuse? 1148

A. I have heard of a decision of the Tribunal of Commerce of Hamburg which seems to me in conformity with the theory which I believe just.

XQ46. I think it would have been interesting, before asking you to give an opinion, to let you know the opinions given in the foreign judgments, for do you not think that above all it is the foreign Tribunals who will have the last word to say on these questions as to the relation between the foreign marks and the French business? You spoke just now of a judgment rendered in Germany. Do you know of the decision which was rendered by the Patentamt? Mr. Lecouturier demanded of the Patentamt to transfer to him the marks filed in Germany by Father Rey, and did so by virtue of judgments and decisions of the Tribunal of Grenoble, and especially the order of February 15th, 1905. Do you know the decision given by the Patentamt on this subject? 1149

A. Yes, yes.

1150 XQ47. Here is the decision of April 22d, 1905: "The petition presented here on February 28th, "1905, and demanding the transfer of the marks "(the numbers of the marks follow) is dismissed "because you have not produced the consent of the "holder ("titulaire"), demanded by the provisional "decision of March 13th, 1905; The three French "judgments of March 31, 1903, April 23, 1904, and "May 17, 1904, not making up for failure to pro- "duce said declaration, in view of the fact that "these judgments do not constitute the consent of "the holder of the transfer. Apart from that a "transfer based on foreign judgments cannot be
1151 "made unless there be produced, in support of the "demand, a German executory judgment, in con- "formity with paragraphs 722 and following of the "Code of Civil Procedure."

A. I hasten to tell you that if I had known of this decision it would have had no influence on my opinion, seeing that, if I have understood it properly, it is solely based on the failure to produce a declaration from the holder. Well, it is evident that the holder, who is Abbé Rey, could not make a declaration which he has contested since Mr. Lecouturier was named Liquidator.

1152 XQ48. Mr. Lecouturier had contended before the Patentamt that the business had been attributed to him, that he had been appointed Liquidator-Receiver of the property of the Carthusians, and that by virtue of decisions and orders, the marks, the foreign marks should be attributed to him, and it was under these conditions that the Patentamt dismissed the demand of Mr. Lecouturier.

By Mr. Kelly: Objection.

By Mr. Bonnet: I may say that I have the intention of producing at the trial all these documents, all the proceedings taken before

the Patentamt. As of course I cannot do so to-day I simply make an analysis of the same, which I ask you, until otherwise directed, to consider as correct. 1153

By Mr. Kelly: I make an objection to the manner in which my adversary has pushed this examination. The last phrase of the decision which he has himself quoted contains these important words:

"Apart from that a transfer based on for-
"eign judgments cannot be made unless
"there be produced, in support of the de-
"mand, a German executory judgment, in
"conformity with paragraphs 722 and fol- 1154
"lowing of the Code of Civil Procedure."

That is to say that the Patentamt has only sanctioned the recognized principle that a foreign judgment can only be valid on the condition that it be made executory in the country where one is trying to have it executed.

By Mr. Bonnet: I am happy—

By Mr. Kelly: Allow me again—This is the first time I have read this decision, I want to read it to the end at least; the decision continues: "The demand of April
"16th, 1905, praying for a delay until July 1155
"31st, 1905, in order to produce the consent
"of the holder, cannot be accorded for in
"spite of the merits of the interlocutory de-
"cision, the demand for transfer has been
"formally maintained, which fact, by virtue
"of paragraph 10 of the law on trade marks
"of May 12, 1824, necessitated a final deci-
"sion, and the issue being joined, this deci-
"sion should be given, all the more so as
"the moving party will always be able to
"renew his demand as soon as he is in pos-
"session of the requisite documents."

1156 That indicates very clearly that the matter is not finally judged, but that as soon as the moving party has obtained his German judgment he will be able to demand the transfer of the Patentamt.

By Mr. Bonnet: I do not remember having said, in my examination, that the German decision was final, but the explanation which Mr. Kelly has just given would alone suffice, if it were admitted by the Court of New York, to show how far the Court of Appeal of Grenoble was right in declaring that the Judge sitting in Chambers was in-
1157 competent to render a decision on the transfer of the foreign marks.

XQ49. Do you know, sir, of the judgment which was rendered by the Tribunal of Buenos-Aires? Mr. Lecouturier requested the exequatur of the French decisions which attributed to him the marks. I read the interesting passages of the judgment, which I produce complete—unless Mr. Kelly desires that I read the whole.

By Mr. Kelly: I feel it is my duty to make
1158 the same objection as to the production of all documents which are not produced in the form prescribed by the American law.

By Mr. Bonnet: I continue:

"Although in this decision there were com-
"prised all the trade marks, Father Rey
"nevertheless made objection to the delivery
"of those filed abroad, for which reason it
"was again necessary to bring an action be-
"fore the French Tribunals, in which was
"rendered the annexed judgment, marked
"letter C, in which it was definitely estab-
"lished that: "As Judicial Administrator,

"entrusted with the Liquidation of the prop- 1159
"erty of the Congregation of the Carthusi-
"ans, now dissolved, he remained authorized
"to take all steps and bring all proceedings
"*en suspens*' in order to effect transfer and
"registration in his own name of the trade
"marks previously filed abroad under the
"name of 'Marcel Marie Grezier and that of
"Celestin Marius Rey'—That the President
"of the French Republic has proclaimed that
"these judgments be executed;

"That Father Rey having filed in his own
"name in the "Argentine Republic marks
"No. 6240 and 6455, corresponding to the 1160
"liqueurs of Chartreuse, he (Le Eaton)—
"that is the attorney of Mr. Lecouturier—
"presents himself in execution of his power
"of attorney and by virtue of what is pre-
"scribed in the judgments above mentioned,
"and demands that these judgments be en-
"forced, by addressing the desired communi-
"cation to the Commissioner of Marks and
"Patents, so that he may proceed with the
"registration, the transfer of said marks to
"the name of Henri Lecouturier, in conform-
"ity with the dispositions of paragraph II 1161
"of law No. 3973. That as the judgments
"in question were rendered after contest
"with Father Rey, the legal grounds of the
"demand are incontestable, in view of the
"fact that the latter is not contrary to the
"laws of the country with regard to all he
"asks. That after examination by the 'Pro-
"cureur Fiscal' the execution of the above
"mentioned judgments be ordered. Heard
"the Procureur Fiscal Fédéral, the latter
"asking for the dismissal of the demand in
"question by reason of its absolute lack of

1162 "legal grounds, since it is contrary to the "spirit and text of the legal provisions in "force in the Republic."

And a little farther on:

"That in accordance with this and exam- "ining the judgment forming the object of "the present decision, of which legalized "copies and translations are to be found an- "nexed to these documents—it is to be seen "by simply reading same that the said judg- "ments have not been rendered as a result "of the exercise of a personal action, but "with the object of executing a law of a
1163 "politico-social order such as the law of July "1st, 1901, is. From which it can be con- "cluded obviously that the origin and end "of these executions cannot have any other "character and any other bearing than those "of the law which occasioned them, and it "is therefore proper to declare that the said "judgments do not offer in any manner the "guarantee set forth in Paragraph I of the "legal provision above cited.

"That in view of the character attributed "by the Tribunal in the foregoing 'consider-
1164 "ant' to the law of July 1st, 1901, its inap- "plicability within the territory of the Re- "public is evident, seeing that the law which "has ordained the execution of same is con- "trary to the principles and aims of those "of the country, for it aims at depriving the "holder of legitimate rights acquired in "conformity with the Laws of the Nation, "as is the law of trade marks, commerce and "agriculture.

"That the rights and privileges, which the "Constitution of the Republic and its laws "accord and sanction, being protected by the

"said Constitution, to order the transfer of 1165
"the marks No. 6240 and 6455 in the form
"demanded, is equivalent without any doubt
"to infringing its principles by attacking the
"national sovereignty, in view of the fact
"that the object of the decisions presented is
"to deprive Mr. Marius Célestin Rey of the
"enjoyment and free use of rights legitimate-
"ly acquired.

"Par ces motifs' in accordance with the
"conclusions of the Memorial, folio 70, and
"the examination by the Ministére Public,'
"judging in a definite manner, I decide

"That there is no cause for the execution 1166
"of the judgments presented, neither, con-
"sequently for the transfer of the marks
"6240 and 6455—with special judgment for
"costs.

"To be served with the original, and with
"re-establishment of the minutes. Thus pro-
"nounced, ordered and signed in the Audi-
"ence Chamber of the Tribunal of the Capi-
"tal of the Republic on the date above men-
"tioned.

"G. Ferrer."

By Mr. Kelly: I ask that the reading of 1167
this decision be struck out as having no
rélation to the question.

By Mr. Bonnet: Did you have a knowledge of this decision before giving your opinion?

A. No, and if I had had knowledge of it I would have said that, although it inspires the respect which I, as a laweyr, have for every regular decision, I could not have prevented myself from stating that it rests on an evidently material error. The decision, the judgment of the Argentine Republic states as a matter of fact that it is a ques-

1168 tion of depriving the holder of rights which he possesses. Well, the judgments and decisions of which the Liquidator demands the execution state precisely that the holder ("titulaire") is not the owner of these rights, that he is a person interposed for the benefit of a congregation.

XQ50. Who makes this statement?

A. The judgment of the Tribunal of Grenoble and the decision of the Court of Appeal of Grenoble.

By Mr. Bonnet: Thank you.

1169 I would have produced other decisions, notably a decision of the Swiss Federal Court of Cassation, but I have not brought them with me, because I did not know of certain questions which have been put to you, but I will produce them later.

Redirect-interrogatories by Mr. E. Kelly, representing the defendants:

RDQ1. I asked you if the law of July 1st, 1901, was a law of circumstance: do you understand a law of circumstance to be the same thing as a law of exception?

1170 A. No, it is not the same thing. A law of circumstance may be a law passed in view of a particular incident, which would not have been made except for the circumstances which happened, and yet not merit the name of "law of Exception." A law of Exception, on the contrary, is a law passed in infringement of the principles of common law against some property and some individuals exceptionally. The law of July 1st, I have said, does not merit the name of law of Circumstance any more than law of Exception. It is not a law of Circumstance, as it had been prepared for more than twenty years, it is not a law of Exception as

it is but the application of the principles of common law. 1171

RDQ2. I am going to ask you, Mr. Millerand, a few questions as to the effect that the nature of the mark itself may produce on the point discussed to-day. In the present case the mark consists of the words: "Fabriqué à la Grande Chartreuse." Is the nature of the mark in this case of a nature to strengthen your argument or not?

By Mr. Bonnet: Objection, leading question.

A. I think that the character itself of the mark, which indicates the place of manufacture of the liqueur, is applied and can only be applied to the liqueur manufactured at the place from which it borrows its name—that if, for instance, there had been chosen in order to designate the liqueur manufactured by the Carthusian Fathers at the Grande Chartreuse a title borrowed from its own qualities, it could be maintained that these qualities follow it everywhere it goes and that such title could only be used for the liqueur in question, whether made at Tarragona, America, Australia or the Grande Chartreuse. But when the mark is the name itself of the place, when, consequently, it indicates the origin itself where the liqueur is manufactured, it seems to be quite excessive to claim—and abusive to claim to make use of same, in order to designate a liqueur which henceforth will be manufactured anywhere else than at the Grande Chartreuse, the very name of the place where up to that time it had been manufactured. 1172 1173

RDQ3. And if the Liquidator had given proof that Chartreuse owed its particular quality to the plants gathered at the Grande Chartreuse itself, and that these plants could not be utilized in the

1174 best conditions except in a fresh state, and consequently could not support travelling, would this proof be of a nature to strengthen your argument or not?

A. It is evident that if the proof be given that the name of "Grande Chartreuse" was chosen as a mark not only because it is in the place called Grande Chartreuse that the liqueur is manufactured, but also because it is at that place that the plants with which the liqueur is manufactured are gathered, that moreover it is from these plants that the liqueur gets the greatest part of its qualities proper, and that they cannot be used elsewhere
1175 without losing even through travelling, a great part of their qualities, it is evident, I say, that the use of the name Grande Chartreuse becomes still more abusive if it is used to designate a liqueur manufactured not only outside of the place from which the mark takes the name, but also beyond the conditions under which the liqueur should be manufactured in order to present the qualities which it had up to that time.

RDQ4. You have been asked to whom should go the balance held by the Liquidator after the realization of the assets and the payment of the annuities
1176 stipulated in the law, and you said that this question was left to the decision of the Tribunal.

Will you tell me whether this question will be decided by the application of law of exception or whether it will be decided according to the common law, to the civil law?

A. It can only be decided, in the absence of any provision in this sense in the law of 1901, by applying the principles of the Civil Code and common law.

RDQ5. General principles?

A. The general principles of the Civil Code and of the common law.

Recross-interrogatories by Mr. J. Bonnet, representing the plaintiffs: 1177

RXQ1. Your opinion is that the law of 1901 is not a law of exception?

A. Quite so.

RXQ2. Associations, other than religious congregations, in order to establish themselves, have they need of an authorization?

A. No.

RXQ3. Have congregations need of an authorization?

A. Yes, for the very reasons given by Mr. Waldeck-Rousseau, and—allow me to finish—which 1178
make congregations by the necessary conditions under which they form themselves evade the rules of common law.

RXQ4. Can a geographical name constitute a mark?

A. Yes.

RXQ5. Your opinion is that in French law a geographical name can constitute a mark?

A. There are numerous examples of names of places being used to constitute a mark, in order to form the essential element of a mark.

RXQ6. In foreign legislature, can geographical names constitute trade marks? 1179

A. I could not give an answer in a general way to such a general question.

RXQ7. Do you know any countries where geographical names may constitute trade marks?

A. I think so.

RXQ8. Which ones?

A. Why, I believe, for instance, that in Germany and in England, it is accepted, a geographical name is accepted as being able to constitute an element of the mark.

RXQ9. That is really your opinion?

A. Yes.

1180 RXQ10. To a question which was put to you just now by Mr. Kelly on the division of the balance of the liquidation I would have liked to have heard you add some complimentary explanations. Among those entitled thereto, to whom a pension will be allowed, do you include the monks who are not secularized?

A. I do not understand the question.

RXQ11. Let us take the Order of the Carthusians. The Carthusians have left France, they are settled abroad. When Mr. Lecouturier will have turned the business and the marks into money, to whom will pensions be allowed?

1181 A. To the members of the congregation, under the very conditions fixed by the law of 1901.

RXQ12. What are those conditions?

A. I have not got the text before me, and I am afraid of making a mistake.

RXQ13. For instance. there is no longer a single Carthusian in France: will pensions be granted to the Carthusians settled abroad?

A. It is evident that they will only be granted to members of the Congregation who ask for same. They will not be granted without a demand made by the members of the congregation.

1182 RXQ14. Is there a provision in the law which one can invoke in order to say that if the Carthusians who have remained Carthusians make a demand, a pension will be granted to them?

A. There is no provision in the law which ordains the granting of a pension in obedience to the law, but it is evident that the first act of those who demand same, by virtue of the law of 1901, the granting of a pension in accordance with the law of 1901, is to abide by the provisions of the law.

RXQ15. What do you mean by abide by the provisions of the law?

A. To cease to belong to a congregation which has been legally dissolved.

ALEXANDRE MILLERAND.

Session of Friday, May 18th, 1906, at 2 P. M. 1183

Present: Parties as before.

HENRI LECOUTURIER, Administrator, of No. 28 Rue du Mont Thabor, in the City of Paris, Republic of France, aged thirty-six years, having been produced, sworn and examined on the part of the defendant, doth depose and say as follows:

Direct-interrogatories by Mr. Edmond Kelly, representing the defendant:

Q1. What is your name?

A. Lecouturier, Henri. 1184

Q2. Your age?

A. 36 years.

Q3. Your residence?

A. No. 28, Rue du Mont Thabor, Paris.

Q4. What is your profession?

A. Judicial Administrator, attached to the Civil Tribunal of the Seine.

Q5. Have you studied law?

A. I am an attorney and doctor of law.

Q6. Since when?

A. Since 1892.

Q7. Are you Liquidator of the Carthusian 1185 Fathers?

A. Yes.

Q8. By what judgment?

A. By judgment of the Civil Tribunal of Grenoble of the 31st of March, 1903.

Q9. Have there been other judgments given since relating to the affairs of the Carthusian Fathers?

A. Four or five Carthusian Fathers made an opposition through other parties against the judgment which appointed me Liquidator; they were non-suited by another judgment of the Civil Tri-

1186 bunal of Grenoble of the month of March, 1903 or 1904, I do not exactly remember.

Q10. Did you immediately take possession of the property of the Carthusians?

A. Immediately.

Q11. Did you bring an action against Mr. Rey?

A. I immediately commenced an action against Mr. Rey, who claimed that he was proprietor of the business and the marks of the products of the Grande Chartreuse, in order to have it shown that he was a dummy party for the Congregation, and a judgment of the Civil Tribunal of Grenoble, of
1187 23rd April, 1904, declared that he was a dummy party for the Congregation and that the business and the marks were, consequently, a part of the assets to be liquidated. The judgment of the Civil Tribunal of Grenoble was confirmed by a decision of the Court of Appeal of Grenoble of July 19, 1905.

Q12. Is this the decision of the Court of Appeal?

A. This is the decision of the Court of Appeal, yes.

Q13. Is the "Gazette du Palais," which I have produced an official journal of legal notices?

1188 A. It is an official journal of legal notices and it is considered that all the judgments which are reproduced in that journal are the expression of the truth.

By Mr. Kelly: I produce the copy of the "Gazette du Palais," of 2, 3, 4 August, 1905, containing the decision of the Court of Appeal of Grenoble of July 19th, 1905.

By the Commissioner: Yes.

(The document produced is marked Exhibit No. 12.)

By Mr. Lecouturier (witness): Father

Rey appealed to the Court of Cassation against the decision of the Court of Appeal of Grenoble and the "Chambre des Requêtes" has not yet passed upon the appeal. 1089

Q14. Are you at present in possession of the property of the Carthusians?

A. I am at present in possession of the Factory of Fourvoirie and of the business.

Q15. Do you enjoy the use of the trade marks in France?

A. Yes.

Q16. Do you actually occupy the Domain of the Grande Chartreuse? 1190

A. Yes, the French Government has granted me a lease of the factory of Fourvoirie and of a part of the Grande Chartreuse, of certain buildings where the Carthusians gathered together the plants, and began I believe the operation of sorting and drying the plants.

Q17. Have you already produced your lease with the State?

A. Yes, I produced it at my previous examination.

Q18. Have you already produced the letter of the "Conservateur des Eaux & Forêts" granting exclusive right to aromatic plants in the whole demesnial forests of the Grande Chartreuse? 1191

A. No, this letter is of later date than my examination and I have not yet produced it; I do not think you have it.

Q19. Is this the letter?

A. This is a copy of the letter, yes.

Q20. Can you produce the original; can you give up the original?

A. I should prefer not to give it up; it is a title deed for me.

Q21. Is this copy an exact copy?

1192 A. This is a true copy, I am quite ready to certify that it is conformable to the original.

(The copy of letter is annexed and marked Exhibit 13.)

Q22. A prefectoral decree forbidding the gathering of certain plants has been produced. Is this prefectoral decree opposable to you?

By Mr. Bonnet: I make an objection. The prefectoral decree does not apply to the gathering.

By Mr. Kelly: The decree which you have produced?—

1193 By Mr. Bonnet: No, it has not been annexed to the Commission, it was mentioned in the course of an examination.

Q23. The prefectoral decree forbids the pulling up of certain plants. In this decree opposable to you?

A. No, precisely, because it forbids the certain plants with a view to preventing the deforestation of the mountains— It does not forbid the gathering of the plants.

Q24. At the present time are the persons who
1194 gather plants for you subject to a summons on account of this Prefectoral decree?

A. There is not the least danger.

Q25. Do you exploit the factory of Fourvoirie yourelf?

A. No, it is Mr. Cusenier who is entrusted with the manufacture and sale of the products, of the liqueur, but under the name of the Liquidator.

Q26. How is it you chose Mr. Cusenier to do the manufacturing?

A. I chose Mr. Cusenier because I have considered him as one of the big distillers of France, and

as being quite capable of doing as well as the Car- 1195
thusians.

Q27. Did you ever agree to hand over the secret of the Carthusians to Mr. Cusenier?

A. No, because I consider that the secret of the Carthusians does not exist, and Mr. Cusenier has exactly the same impression as myself.

Q28. Has Mr. Cusenier ever promised to hand over to you the said secret of the Carthusians?

A. No, Mr. Cusenier considers there is no secret; there may be process, knacks; there is no secret of manufacture.

Q29. Is Mr. Baglin the Procureur of the Order of the Carthusians? 1196

A. No, when Mr. Baglin brought suit in America he was at that time the Superior General of the Order of the Carthusians—not Procureur—and since the litigation he is no longer the Superior General: he has been replaced by Father Herbault.

Q30. Is there an order of the Carthusian Fathers at the Convent of the Grande Chartreuse at the present time?

A. No, there no longer exists any order of the Carthusian Fathers at the Convent of the Grande Chartreuse.

Q31. For how long has the order of the Carthu- 1197
sian Fathers been dissolved?

A. The Order the Carthusian Fathers was suppressed by the Revolution in 1793, like all the Congregations.

Q32. Do you know the law of the 13-19 February, 1790, which is worded as follows: "The constitutional law of the Kingdom no longer recognizes the solemn monastic vows of either sex. We consequently declare that the regular Orders and Congregations in which such vows are made are and remain abolished in France without similar ones being able to establish themselves in the future?"

1198 A. Yes, it is a very celebrated and well-known law.

Q33. Is it the first law that abolished the Congregations?

A. Yes.

Q34. Do you know of the decree of the 18th August, 1792, which completely abolished all religious corporations of men and women, of whatever nature they might be?

A. Yes.

Q35. And decreed the sale of all their property promising to the members of the dissolved congregations pensions on the conditions that they took
1199 the civic oath?

A. Yes.

Q36. It was in fact these laws and this decree which abolished the congregations in France?

A. Yes, they were applied to the Congregation of the Carthusians.

Q37. Since that time has a law of any kind been passed reconstituting or permitting congregations to exist in France?

A. Yes, certain special laws have been brought in authorizing certain congregations, but the Congregation of the Carthusians has never been au-
1200 thorized.

Q38. Then am I to understand that since the laws of the 13 and 19 February, 1790, and the decree of the 18th August, 1792, the Carthusians have not had any legal existence in France?

A. They no longer have any legal eixstence in France.

Q39. Were they expelled at the time of the Revolution of 1792?

A. Yes, they were expelled at the time of the great Revolution, and they came back to France in 1816.

Q40. Father Baglin, in his summons and complaints, declared that the Carthusian Fathers have manufactured the liqueur or the elixir known under the name of Chartreuse for 300 years; is this exact? 1201

A. No, there was unavoidably an interruption.

Q41. At what period?

A. At the time of the Revolution, until 1816, the time of their return to France.

Q42. Have they manufactured in France since the day you became the Liquidator of the property of the Carthusians?

A. No, since 1903, the Carthusians have no longer manufactured in France, they transported all their installation to Spain, where they manufacture under another mark. 1202

Q43. Do you know what is the derivation of the word "Chartreuse?"

A. The word "Chartreuse" is a regional name, a name of the Dauphiné district, and when the Carthusians came and settled at Saint Pierre de Chartreuse they took—that goes back, I believe, to Saint Bruno—from the name of the Region the name of the Order of Chartreux.

Q44. I now produce "Le Désert de la Grande Chartreuse," by A. Pascal, page 34, and I find the following phrase: "The Allobroges, in order to "escape from bondage, hid themselves in the midst "of the sombre and vast virgin forests of the Char- "treuse. It was perhaps at this epoch that the "mountains took the name of Carthusia, the origin "of which is unknown, but which is by far anter- "iorto the arrival of Saint Bruno." Are you acquainted with this extract? 1203

A. I know it.

Q45. I produce the book "Bruno de Cologne et la Grande Chartreuse" by Boyer d'Agen, and I find on page 15 the following phrase: "The Region

which Heaven seem to have reserved for you is a lonely spot situated in the high mountains: it is called Chartreuse." Are you acquainted with that extract?

A. Perfectly.

Q46. Have you consulted Larousse, Great Universal Dictionary?

A. Certainly.

Q47. At the word "Grande Chartreuse" are the following words to be found: "Convent of Char-"treuse: the Grande Chartreuse was established by "Saint Bruno near the village of Chartreuse, in "Dauphiné," "Commerce: A tonic liqueur much "liked which is obtained by the distilling of aro-"matic plants which grow on the mountains of the "Alps and which takes its name from the Convent "of the Grande Chartreuse where it is manufac-"tured in such great quantities that the annual sale "reaches upwards of two million francs."

A. Yes.

Q48. Have you consulted the Grande Encyclopédie?

A. Yes.

Q49. Are the following words to be found in it: "Grande Chartreuse—Chief Monastery of the Or-"der of the Carthusians, situated on the territory "of the Commune of Saint Pierre de Chartreuse, "arrondissement of Grenoble, Isère, in the demes-"nial forests of the same name."

A. Yes.

Q50. Have you consulted Littré Dictionary of the French Language, Tome I, page 570: "Char-"treuse—Etymology: Carthusiensis, from mounts "Carthusiani, name of the mountains where these "monks first established themselves, or from Cator-"issium, Carurissium, Chartrouse, name of the vil-"lage in Dauphiné near which was first founded "their first monastery."

A. Yes.

Q51. Have you consulted the Dictionnaire de Bescherelle Ainé, Nouveau Dictionnaire National, Volume I: "Chartreuse.—It was in 1084 that "Saint Bruno founded the Order of the Carthusians "of which the first monastery since called Grande "Chartreuse, was built in the diocèse of Grenoble, "near the village of Saint Pierre de Chartreuse, "Chartrouses or Chartroux, from which the Order "took its name. The first rule imposed on the Car- "thusians was absolute silence—" 1207

A. Yes.

Q52. Do you know a dictionary or encyclopedia of any kind which gives any other derivation for the name Chartreuse? 1208

A. I do not know of any.

Q53. The Carthusians claim to manufacture the liqueur at Tarragona with French alcohols. Do you see, do you know any difficulties to manufacture Chartreuse at Tarragona with French alcohols and to sell it at the price at which the Carthusians sell it at the present time?

A. That seems to me to be absolutely impossible, because if the Carthusians manufactured with French alcohols they would be obliged to pay twice the duty on alcohols: the duty on entering Spain, about Frs: 197—per hectolitre and when the alcohol came back into France it would still be necessary for them to pay a duty of Frs: 60—per hectolitre. 1209

By Mr. Bonnet: Objection: in no testimony have I seen an assertion of this nature.

By Mr. Kelly: Take note of that and I am pleased to hear from my adversary that the Carthusians do not claim to manufacture the liqueur with French alcohol.

1210 By Mr. Bonnet: I do not say that they do not claim that: I say that this assertion does not appear in any deposition.

Q54. You have been reproached for a letter to the "Temps" an article of the "Temps" of September 20th, 1904. Have you since your examination made any researches on the point of knowing up to what extent the manufacture of the Chartreuse depends on the plants gathered at the Grande Chartreuse?

A. Yes.

Q55. And has this information been of a nature
1211 to strengthen your opinion or not?

A. This information has fully strengthened the opinion I had that the Chartreuse liqueur can only be manufactured at the Grande Chartreuse and that the Carthusians have always affirmed this at all times, up to the moment when they were expelled from the Grande Chartreuse and obliged to manufacture their liqueur at another place.

Q56. Have you found any other jurisprudence than that which has already been produced by you on this subject?

A. Yes, I have found some jurisprudence on an-
1212 alogous cases.

Q57. You produce this extract?

A. I produce this extract.

Q58. Which you annex to your testimony in support of your letter?

A. Quite so.

(The paper produced is marked Exhibit No. 14, and annexed to the Commission.)

Q59. Do you know of the report of an expert named Dournon, made on the 15th February, 1899?

A. Yes. When Mr. Rey was supposed to buy

1237

the business of the Grande Chartreuse from Father Gréizer in 1897, he gave as the value of the business he bought, for the clientelage: 1,500,000—francs. The tax department was not satisfied with this valuation and declared it was quite insufficient for the collection of the taxes, the business having a much greater value. The Department not being able to come to an understanding with Mr. Rey, issued a summons and complaint and had experts appointed in order to value the business. The expert for the Tax Department was precisely Mr. Dournon, who made his report on the value of the business to the Civil Tribunal of Grenoble. 1213

Q60. In this report I find—this report has been produced by us thanks to a stipulation with the other side and I think for the sake of form I must to-day produce it and have it annexed as being part of the Commission. 1214

By the Commissioner: Very well.

By Mr. Kelly: I think it will be well to qualify that as "by under stipulation."

I find in this report on page—which I will indicate later, the following passage: "The excellence of the alcohols apart, it is "to the preparation made by the Carthu- 1215
"sian Fathers and to the virtues of the plants "gathered in the mountain group of the "Chartreuse that the public partly attri-"butes the delicacy and qualities of the li-"queur and elixirs. It is therefore neces-"sary that the products should be manufac-"tured in the region and by a Carthusian in "order to retain the confidence which they "have acquired."

By Mr. Bonnet: Will you give me the page?

1216 By Mr. Kelly: Unfortunately I have a copy here which does not tally with that copy: I must find it—it is page 23. Again on page 25: "Father Rey could no longer "in fact, in our opinion, at least, put on one "or the other the mention 'Liqueur fab- "'riqué à la Grande Chartreuse' because "the only domain in the world which has "the right to the title of Grande Chartreuse "is that which is situated in the 'communes' "of Saint Pierre de Chartreuse, Saint Lau- "rent du Pont, Niribel, the Echelles, or in
1217 "a word in the Department of Isère, and "which belongs to the State.

"On transporting his manufactory to an- "other property, where the Suprême Chief "of the Order would set up with him, in or- "der to there establish the principal estab- "lishment of the Congregation, Father Rey "might be able to offer to the public, for in- "stance, products of the Grande Chartreuse "of Pavie (Chartreuse taken as a common "noun), but not products of the Grande "Chartreuse (Chartreuse being a proper "noun as name of the region) without any
1218 "other addition."

Page 27: "It has been established on the "contrary, by repeated decisions, of which "details will be found hereafter, that the "term of Chartreuse, products of the Grande "Chartreuse, designate at the same time not "only the manufacturer, the Carthusians, "but also and above all—says a decision of "the Court of Appeal—the place of manu- "facture."

Afterwards: "It is not, moreover, the Car- "thusian Fathers who have given their name "to the region and to the convent, but it was

"Saint Bruno himself who adopted for his "monks the name of the region, where he "came and established his retreat. This fol- "lows notably from the work entitled 'La "'Grande Chartreuse' par un Chartreux, "which is an authority on the subject, and "from the work of Mr. Henri Ferrand, law- "yer, 'Les Montagnes de la Grande Char- "'treuse' page 112." 1219

By Mr. Bonnet: What page?

By Mr. Kelly: Page 28. Then follows a collection of decisions and jurisprudence. Do you produce this report in support of the declaration made in your letter to the "Temps?" 1220

A. Certainly.

(The report is annexed and marked Exhibit No. 15.)

Q61. Have the Carthusians been expelled from France since their expulsion at the time of the Revolution in the 18th century?

A. No. When the law of 1901 was applied to the Congregation of the Carthusians, the Carthusians remained in the convent of the Grande Chartreuse. They therefore committed an offence provided against by the law of the 1st July, 1901, and all the members of the Congregation who were at the time in the buildings of the Grande Chartreuse were cited to appear before the Juge d'Instruction at Grenoble to answer for the offence. These members of the Congregation of the Carthusians refused to appear and the warrant to appear was changed to a warrant of attachment of the person. The warrant of attachment of the person was executed by troops, for it was the public notoriety 1221

1222 that they would not leave the Grande Chartreuse without the employment of troops, and it was under these conditions, in order to have the summons to appear executed that the Juge d'Instruction and the Procureur of the Republic entered by force into the convent of the Grande Chartreuse and made the monks leave, each one accompanied by two gendarmes. The monks afterwards left immediately for abroad.

Q62. Does the law of 1901 carry with it the expulsion of the members of Congregations?

A. No, the law of 1901 simply carries with it
1223 the prohibition for the members of congregations to live as a congregation, but they can continue to live alone and many have remained in France separately.

Q63. Has the trade mark in question—have the Carthusians made use of this mark without interruption up to the present time in their business with the United States and foreign countries?

A. No, they ceased making use of it from 1904, from which period they have filed a new mark.

Q64. Does this new mark contain the words: "Fabriquée à la Grande Chartreuse?"

A. No, it bears: "Liqueur fabriquée par les
1224 Pères Chartreux à Tarragone."

Q65. Have you ever represented that you were in possession of the said recipe of the Carthusians?

A. Never, as I do not believe that there is a secret of manufacture.

Q66. Has Mr. Cusenier to your knowledge or with your approval ever represented that he was in possession of the said recipe?

A. Not to my knowledge, and for the same reason.

Q67. Mr. Garrett has been reproached with having pretended to be able to sell a stock, a large

stock of old Chartreuse found at Fourvoirie. Do you know of this incident and can you give an explanation? 1225

A. Yes, in the first place, to my knowledge, the Liquidation or Mr. Cusenier have never made known to Mr. Garrett that there existed any old Chartreuse in stock and which was found at Fourvoirie on our entering there. Only, on going to Fourvoirie, the first time the inventory was taken in a certain number of casks, large casks which are to be found at Fourvoirie, liquids which were alcoholates were found, and it may be that one did not know how to distinguish the difference between the alcoholates and the manufactured liqueur, and that the rumor got about that they were manufactured liqueurs which were found at Fourvoirie, which Mr. Garrett might have misunderstood. 1226

Q68. Have you ever authorized Mr. Garrett to sell any of this old stock?

A. Never.

Q69. And he has never sold any to your knowledge?

A. To my knowledge he has never sold any.

Q70. Have the Carthusian Fathers paid the costs, the taxes, which they ought to pay during the time of the manufacture of Chartreuse at Fourvoirie? 1227

A. No, the Carthusian Fathers have sought to evade as much as possible the stamp taxes which weighed on non-authorized French Congregations. It is thus especially that for the manufacture of liqueurs they have caused the manufacturing to be done under the name of a member of the congregation and have evaded the "droits d'accroissement" and income tax. When I was appointed Liquidator, and the Court of Appeal and Tribunal declared that Father Rey was a dummy party, the French Tax Department claimed from me the sums

which were due by the Congregation of the Carthusians for the "Droit d'Accroissement" and the tax of income: these sums amounted to Francs 1,037,296.54.

Q71. Who is the sole manufacturer of Chartreuse at the present time?

A. Mr. Cusenier.

Q72. What is the sole genuine Chartreuse exported to the United States since the departure of the Carthusians?

A. The Chartreuse manufactured at Fourvoirie.

Q73. Have you ever permitted any counterfeiting?

A. Never.

Q74. Have you always sued all imitators as soon as you had knowledge of same?

A. I have prosecuted all imitators as soon as I had knowledge of the counterfeits.

Q75. It has been claimed that Chartreuse did not sell well, that Chartreuse manufactured by Mr. Cusenier did not sell well in London: can you me give an explanation of this?

A. Because the Carthusians have done all they could to prevent the sale in England of the liqueur of the Liquidator. They commenced by having the cases sent from France to England attached and had the greatest publicity possible given to the attachments. It was only when I had been able to obtain the vacation of the attachments and the registration in my name of the marks that Mr. Garrett was able to begin some efforts in order to organize the sale of the liqueur.

Q76. Did the seizure by the Custom House have the effect of completely paralyzing the trade of Chartreuse in England?

A. The seizure by the Custom House had the effect of completely paralyzing the trade of Chartreuse in England.

Q77. The cross-examination of Mr. Dondey seems to have indicated that Mr. Dondey was not in the opinion of the other side a man worthy of confidence. Have you any data on this subject? 1231

A. I consider that Mr. Dondey is a man worthy of confidence, and I only went to him for information because I found that he had to do officially with the operations in which the French authorities are at the present time engaged. He is an expert to the Justice of the Peace of Saint Laurent du Pont; the Civil Tribunal of Grenoble has also appointed him to make some valuation operations, and I have found out since the Chartreuse case has commenced that he is also the expert of the Tax Department in a case which even pertains to the liquidation and against myself. By a judgment of the Civil Tribunal of Grenoble, it was declared that the Hospital of Saint Laurent du Pont was the property of the liquidation. I valued it at the sum of—which the Tax Department did not consider as sufficient; it immediately brought an action in order to have the value of the Hospital fixed and it is Mr. Dondey himself that the Tax Department has chosen as an expert. Moreover, I know that the Tax Department as owner of the Convent of the Grande Chartreuse and the factory of Fourvoirie, has the work, which it has had done to the buildings themselves, superintended and looked after by Mr. Dondey. 1232 1233

Q78. Do you know of any other matters in which Mr. Dondey has been appointed as expert?

(Mr. Kelly passes a paper to Mr. Lecouturier.)

A. Yes, here are two matters in which he has been appointed expert by order of the President of the Civil Tribunal of Grenoble sitting in Chambers.

1284 By Mr. Bonnet: Objection: Mr. Kelly, in order to refresh the memory of Mr. Lecouturier, passes notes to him.

By Mr. Kelly: I had two letters passed to him.

By Mr. Lecouturier: From an attorney of Grenoble who asks Mr. Dondey whether he will accept to be appointed— The President of the Tribunal officially asks him whether he wishes to undertake this mission.

1285 Q79. What is the name of these two matters?

A. The first is a letter from Mr. Ausias-Turenne, attorney at Grenoble, of the 13th November, 1904, addressed to Mr. Dondey to inform him that he has been appointed expert, by order given by the President of the Tribunal, sitting in Chambers, the 11th November, in the matter of Charvet versus Petit Thomas. The second letter is a letter from and to the same persons, of the 10th December, 1904, in which the attorney asks Mr. Dondey officially on behalf of the President of the Tribunal, whether he accepts to fulfil the functions of expert in the matter between Mr. Pierre Billon and Mr. Amédée
1286 Chabert, of Voiron, and begs him, if he accepts the mission, to let him know by return of mail, and he will be officially appointed.

By Mr. Kelly: Thank you.

Cross-interrogatories by Mr. Bonnet, representing the Plaintiffs:

By Mr. Bonnet: To my regret I am obliged to point out that I have not been advised as to the questions that you intended

putting to Mr. Lecouturier. I believe you forgot to do so, but I have it put on the records all the same. 1237

By Mr. Kelly: The role of Mr. Lecouturier is so well known in the matter that it did not seem necessary to me.

By Mr. Bonnet: I am sorry, for I would have brought some interesting documents. I am going to try to make up the deficiency.

XQ1. You have said, sir, that the Prefectoral decree of 1900 forbade the pulling up and not gathering: that is your own expression?

A. I believe you yourself pronounced the word pulling-up in your objection. 1238

XQ2. Yes, then you took up my expression and you said: the Prefectoral decree forbids the pulling-up and not the gathering. In the event of any dispute I can have the passage read over to you.

A. Yes.

XQ3. The witnesses we have heard on behalf of Mr. Cusenier and yourself, the forest-keepers Georges and Faige, declared to us in the first place that it was a Prefectoral decree of 1896, whereas, it was a Prefectoral decree of 1900. Moreover, they declared that the Prefectoral decree prohibited the gathering in the domain of the State, in the domain of the Communes and even on private people's property. I see that you have a different opinion and I presume it is because you must have read the decree, which is formal on the subject. How do you explain the error committed by these witnesses? 1239

A. I cannot explain to you the testimony of another witness, I can explain mine to you.

XQ4. You have told us on two different occasions during the examination, that the Carthusians had no secret of manufacture, that they had

1240 processes of manufacture, and I would like even, in order that there may be no error, that this passage of your testimony be read over.

(The stenographer reads questions and answers No. 27 and 28 of the direct interrogatories.)

As you have put processes of manufacture in opposition to secret, what difference do you make between a secret and a process? Can you tell me what difference you make?

1241 A. That is to say that a secret of manufacture would be a fixed recipe, a formula such that if one did not possess it, it would be absolutely impossible to make the liqueur, whereas the process of manufacture is the manner of getting to make the liqueur more or less good according to the skill of the producer or his knack.

XQ5. Therefore, according to you, that is the only difference which exists between the secret and the process of manufacture?

A. I will tell you it is not at all in my line, you know.

XQ6. You have just made a statement and I ask 1242 you for an explanation on the subject of this statement. You oppose the secret to the process, I ask you to define the secret as opposed to the process, and I ask you if you really hold to the explanation which you have just given?

A. Yes.

XQ7. Therefore what characterizes a secret is that it is immutable, and what characterizes the process is that it is not immutable and that it depends upon the skill of the professional?

A. No, I consider if there were a secret of manufacture and it was not known it would be impossible to manufacture the liqueur in question.

XQ8. Is not the secret of manufacture a process? 1243

A. I do not understand. If the secret is a process you cannot ask me for the difference between the secret and the process.

XQ9. It is precisely because the definition which you have given is so much opposed to the definition usually given of the secret of manufacture that I try to get you to state precisely. Will you, once again, tell me what is a secret of manufacture?

A. I refer to what I have told you.

XQ10. You have no other complementary explanation to give me? 1244

A. No.

XQ11. What difference do you make between a knack and a process?

A. Oh, I do not make any.

XQ12. What difference do you make between a knack and a secret?

A. The same as between a secret and a process.

XQ13. If the knack is a secret, is not known, would you say it is a secret of manufacture?

A. No.

XQ14. When would you say there is secret of manufacture? 1245

A. When the product cannot be manufactured without knowing the secret.

XQ15. Do you believe that if one is ignorant of the knack that one can manufacture the product?

A. Yes.

XQ16. Do you know what is called the "tranchage" in the treating of liqueurs?

A. No.

XQ17. I will explain it to you. The "tranchage" is an operation which consists in heating the alcoholate at a given moment. Is it a knack or a secret?

1246 A. I do not know the "tranchage."

XQ18. I have just defined it for you. In view of the definition which I have given, will you tell me whether, according to the definition of the secret, of the process and of the knack which you have given, the *tranchage* is a knack?

A. I declare to you that I am incapable of ananswering your question because I do not know questions at all.

XQ19. Let us pass to another question. Also you have declared, sir, that the Carthusians had taken to designate their order, the name of the region in which they had settled. On what do you
1247 rely in order to make such an affirmation?

A. On the extracts which I have produced in support of my testimony.

XQ20. Will you quote me a dictionary, a work in which it is clearly stated that it is the Carthusians who get their name from Saint Pierre de Chartreuse and not Saint Pierre de Chartreuse which takes its name from the Carthusians?

A. I have quoted four of them.

XQ21. And in your opinion these quotations are conclusive?

A. Perfectly.

1248 XQ22. Quite conclusive?

A. Strictly.

XQ23. You have no other elements of demonstration than those which you have supplied?

A. I do not understand.

XQ24. Have you any other elements to demonstrate this fact that the Carthusians get their name from Saint Pierre de Chartreuse, other than the documents which you have furnished?

A. I have not looked for any others.

XQ25. In a passage of your examination, sir, you said, that the information you had had, had since strengthened you more in this opinion that

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the Carthusians had declared that the plants of the mountain group were indispensable for the manufacture of the liqueurs. To what documents did you allude and to what information? 1249

A. Will you read the passage of my deposition?

XQ26. I copied as correctly as possible: "the information which I have been able to obtain has confirmed me in this opinion that the Carthusians have always declared that the plants of the mountain group were indispensable."

A. Why, the report by Mr. Dournon clearly says so.

XQ27. Who is Mr. Dournon?

A. Mr. Dournon is an architect at Grenoble. 1250

XQ28. Mr. Dournon, architect, has given an opinion on the use of the plants in the manufacture of Chartreuse?

A. When Mr. Dournon, architect, was instructed to make his report on the value of the business of the Chartreuse, he obtained information from the Carthusians themselves, from Father Rey.

XQ29. Have you anything in his report which permits the production of such an allegation?

A. There are letters from Mr. Rey to Mr. Dournon.

XQ30. Have you got them? 1251

A. They are quoted in the report, I think. If they are not quoted themselves, they result clearly from the context of the report, in which it is stated Father Rey himself gave the principal theories and information of which we had need for drawing up the report."

XQ31. On the subject of the plants?

A. On the subject of the ensemble of the affair; in the first place on the subject of the value of the business, on the subject of its precariousness in the event of the Carthusians being expelled from from France and of the impossibility of their being

1250

1252 able to continue to put on their labels "Liqueur fabriquée à la Grande Chartreuse," the title belonging only to the domain and country of origin, and then about the principal expenses that Father Rey had in the working of the business.

XQ32. I desire to be very precise; you have given us information which is very interesting, but you have not replied to my question. Did Father Rey in his letters to Mr. Dournon declare that the plants of the mountain group of the Grande Chartreuse were indispensible?

A. I did not say that. I told you that Mr. Dournon got information for drawing up his report spe-
1253 cially from Mr. Rey.

XQ33. Did Father Rey supply information about the plants?

A. I do not know whether Father Rey supplied the information about the plants, but I know that the information which Mr. Dournon gives emanates partly from Mr. Rey.

XQ34. In any case, you cannot affirm that Father Rey supplied information to Mr. Dournon about the plants?

A. No, but what I do affirm is that I consider it likely that Mr. Dournon having had from Father
1254 Rey the information he has need of for his report, has not brought forward an affirmation so percise as that which he has put into his report without being sure of it, and having had it checked by Father Rey notably.

XQ35. You produced a while ago a note which is marked Exhibit No. 14 and when producing this note you spoke of by jurisprudence analogy. In the first place from whom does this note, which has been produced, come?

A. It comes from my counsel.

XQ36. It comes from your counsel?

A. Yes.

1251

XQ37. On the 10th and 12th of February last I questioned you in order to ascertain to which of the numerous declarations of the Carthusian Fathers and to which judgment you made allusion in order to try to justify the allegations contained in your letter to the Journal "Le Temps." After having promised on the 10th February to look for them for the 12th, you then, on precise indications given you by Mr. Kelly during the sitting, quoted a judgment which is to be found on page 303 of the "Recueil de la Jurisprudence" relating to the marks of the liqueur manufactured at the Grande Chartreuse, of which moreover I contested the bearing. But, at the request of Mr. Kelly, you added that several other judgments existed which you could invoke, having reference to the Bonal affair, going back 10 or 15 years. You promised to look for these decisions; have you found them? 1255 1256

A. I have them.

XQ38. Can you produce them?

A. I could communicate them.

XQ39. I insist on their being produced.

A. They shall be produced in 48 hours.

By Mr. Kelly: And would you like us to come to an understanding in order that these documents may be produced without the presence of Mr. Lecouturier and ourselves? 1257

By Mr. Bonnet: Certainly, on the condition, however, that I can, afterwards make sure of their authenticity.

By Mr. Lecouturier (Witness): They are not official copies; they are copies which my attorney took himself at the office of the Clerk of the Court. If you want official copies I will ask for them. In 24 hours I can tell you; it is a judgment of such and such a

1258 date, of such and such Chamber of Grenoble.

By Mr. Bonnet: I will ask you for the dates of the judgments.

By Mr. Kelly: You have no need of official copies on stamped paper; if I give you the dates of these judgments is it all you want?

By Mr. Bonnet: I will ask you for the dates, reserving the right, if I think proper, to ask you for the production of an official copy.

XQ40. The pages you have cited of the report of Mr. Dournon, the paging of which you referred to,
1259 is really that of the document which has been delivered to you by the Clerk of the Court? I can therefore rely on this paging. On page 23 of the report of Mr. Dournon which you have just produced this phrase is to be found: "It is necessary "that the liqueur be manufactured by a Carthu-"sian?" You attributed just now a certain authority to the declarations of Mr. Dournon, what do you think of this declaration?

A. What, what I think of it?

XQ41. Do you think that Mr. Dournon says the truth when he declares that it is necessary that the
1260 liqueur be manufactured by a Carthusian?

By Mr. Kelly: Would you like Mr. Lecouturier to read the whole phrase in order that he may understand it?

By Mr. Bonnet: Certainly.

(Mr. Lecouturier reads the report which is handed to him by Mr. Kelly.)

A. Mr. Dournon says that it is necessary that the products be manufactured in the region and by a Carthusian in order to preserve the confidence which they have acquired, that is an opinion of Mr. Dournon.

XQ42. Do you share his way of looking at it? 1261

A. That does not concern me, the question of knowing whether the confidence of the public in this respect depended on the liqueur being produced in the region and by a Carthusian.

XQ43. Mr. Kelly asked you just now whether the Carthusians had been expelled *manu militari*, and in reply you said that it was in executing a summons to appear before the examining magistrate that they were expelled from the convent. Were they conducted before the examining magistrate?

A. No, they were not conducted before the examining magistrate. I do not know how the matter 1262
was settled; they declared, I believe, that they were going to leave for abroad and they were allowed to go away.

XQ44. Then how do you explain that it was by virtue of a warrant to appear that they were expelled, and that this warrant to appear was not carried out?

A. That is not my business.

XQ45. Does not that seem to you to be extraordinary?

A. I have not to judge those questions.

1263

(Mr. Bonnet has the stenographer read question and answer No. 62 of the direct-interrogatories.)

XQ46. Are there any Carthusians who have remained in France?

A. I have known one.

XQ47. Who?

A. A Carthusian who remained at the Chartreuse de Vauclair. I believe he is called Dom Philippe.

XQ48. What did he do at the Chartreuse?

A. He continued to cultivate the land of the Char-

1264 treuse, and he cashed the products which the Liquidation should have cashed.

XQ49. Do you know of any others?

A. I do not know of any others.

XQ50. Is this Carthusian still there?

A. I do not know.

XQ51. You have said that since 1904 the Carthusians no longer made use of the marks of the Grande Chartreuse. What do you know about it?

A. Why, because they have a new mark, the "Liqueur des Pères Chartreux Fabriquée à Tarragone."

1265 XQ52. It is for this simple reason that you declared that they no longer made use of the old mark?

A. I suppose they cannot make use of the mark "Liqueur fabriquée at the Grande Chartreuse," as they no longer manufacture à la Grande Chartreuse.

XQ53. Have you another proof to give?

A. How would you have me give a proof of a fact like that?

XQ54. You are sued in different countries, you or your agents, by the Carthusian Fathers, by virtue of the marks which we will call, if you like, marks
1266 of the Grande Chartreuse, and you declare that since 1904 the Carthusians no longer make use of these marks.

By Mr. Kelly: Excuse me, my question was: Do they make use of the mark for business with the United States and foreign countries?

By Mr. Bonnet: That is it in a general way I put the question to Mr. Lecouturier. I say to him: You have made such a declaration, on what do you base it? Mr. Lecouturier answers me (on the fact that they have

a new mark): I say, is this a sufficient reason, or have you any other argument, an other reason to give? 1267

A. I have no other reason, unless it is that the liqueur of the Carthusians is no longer to be found, that it is sold at a premium—not that which is made by the Carthusian Fathers, but that which bears the old mark, the word "Allier."

XQ55. Are you sure that no more is to be found?

A. I am sure that it is sold at a premium.

XQ56. Perhaps because it is better?

A. If the manufacturing were continued there would be no reason for it to be sold at a premium. 1268

XQ57. On the subject of certain facts with which your agent, Mr. Garrett, at London, was reproached, you said that the Liquidation had never declared to its agents that there was a stock of old Chartreuse. Consequently you declare that the Liquidation has done nothing which would be of a nature that would mislead the consumer and to make believe that the liqueur which you sell was the same, was the liqueur that the Carthusian Fathers formerly manufactured at the Grande Chartreuse?

A. If you will kindly read over my testimony.

1269

(The stenographer reads question No. 67 of the direct-interrogatory, and a part of the answer.)

XQ58. That is what I alluded to. You have done nothing or said nothing that was of a nature to mislead customers?

A. I repeat that neither Mr. Cusenier nor I have ever made known to Mr. Garrett that any of the old Chartreuses remained in stock.

XQ59. Will you kindly tell me for what motive you have put at the bottom of the labels the words:

1270 "Imp. Lith. Grenoble" in the place and instead of and in the same type as "Lithi Allier, Grenoble"?

A. Why I have put it?

XQ60. Yes?

A. I do not understand.

XQ61. The old labels used by the Carthusian Fathers bore the imprint: "Lith. Allier, Grenoble." Your labels bear the imprint: "Imp. Lith. Grenoble" in the same type, placed at the same spot. Will you tell me for what reason you used these three words?

A. Because it is the truth, the labels are printed, lithographed at Grenoble.

1271 XQ62. Why did you not put the name of the printer?

A. Because I did not judge it necessary.

XQ63. Why did you put three words as in the label of the Carthusian Fathers?

A. Because it is a printing-lithographing firm which is at Grenoble.

XQ64. And as it is the usual custom, you cannot deny, to put the name of the printer, why have you not put the name of the printer?

A. I believe that the Carthusians have not always put it; I believe it is not a usual custom.

1272 XQ65. At what period did they not put it?

A. A good while back, I have been told, the name of the printer not mentioned. I could not affirm that, I have been told so.

XQ66. And it is for this sole reason that you have supressed the name of the printer?

A. No, you tell me it is the usual custom; I answer you; it is not the usual custom, one is free to do as one wishes.

XQ67. You have told us that there were found at Fourvoirie, when the inventory was taken, some alcoholates. Well, the inventory mentions untreated alcohol estimated at 80 centimes per litre. How

do you explain that there is no mention made in the inventory of alcoholates? 1273

A. In the first place I believe there was an error in the inventory, an error by the expert who even took certain empty casks for full casks. And then afterwards I believe there were found—I am certain—some treated and colored alcohols.

XQ68. In any case a document which is of probative force, the inventory, simply speaks of non-treated alcohol, not alcoholates, and, I believe, 5, 6 or 16 bottles of Chartreuse, exactly 25 bottles of Chartreuse. You have sued, you have said, all imitators as soon as you had knowledge of the imitations; who are the imitators you have sued? 1274

A. I have sued Bonal in France, I have also sued Boitel in France, and I have sued Boitel in England, or to be more exact if you like, I joined in the proceedings taken in England against Boitel.

XQ69. You have sued Bonal in France?

A. Yes.

XQ70. Will you kindly tell me how your claim was worded?

A. There is a case pending at the present time at Grenoble with me an attachment of counterfeit goods.

XQ71. Since how long a time? 1275

A. Oh, the case was to be heard on the 16th May, consequently it has been instituted several months ago.

XQ72. You have told me you sued Boitel, was it really yourself?

A. It was the Public Prosecution, but I appeared as a civil party in the action, so much so that my Liquidation was obliged to pay a part of the costs, because he was insolvent.

XQ73. You sued Boitel in England, you said; what costs did you have to support for the proceedings in England?

1276 A. I contributed to the costs of the party who prosecuted for a sum of—I think it is twenty pounds sterling (20); it seems to me; I cannot affirm it. I was asked for a share of the costs.

XQ74. You have not sued any other imitators?

A. I do not remember having sued any others.

XQ75. Mr. Tiéche, manager of Mr. Cusenier's factory, declared to us that a contract was entered into between you and the State for the gathering of the plants, and that instructions had been given by the Prefect in order to prevent the gathering of plants in the whole of the domain of the State. Mr. Tièche declared that it is in your lease that the
1277 clause relating to the gathering is to be found; is this exact?

A. No, Mr. Tièche made a mistake. It was believed that the lease granted to me the gathering of the plants everywhere, and on examining the document during the course of the proceedings, it was noticed there was an omission which was made up by constituting a new special lease for the gathering of the plants.

XQ76. The authorization given you, and which begins from the 2nd March, 1906—or rather you asked for on the 2nd March, 1906, was not this au-
1278 thorization preceded by a request for authorization for 18 years?

A. No, it is the same request, I made a request for the concession of the gathering of the plants, and then, a provisional concession was granted me immediately, as the administration of the department has the power of giving a concession for one year, and the central administration—Ministry of Finance—will grant me a concession for 18 years which will coincide with my lease and will complete it, as was always the intention.

XQ77. Before the 2nd March, 1906, was the gathering of plants—I do not speak of the pulling-up of

plants—free in the domain of the State? Was the gathering free before the 2d March, 1906? 1279

A. It was considered, from the day I became tenant of the domain of the State, and where I have the monopoly for the gathering of certain plants in certain parts of the domain, that the concession of all the liqueur plants on the whole of the domain was granted to me, and it was the instructions of the Prefect previous to the 2nd March, 1906, that Mr. Tièche alluded to when he said that the keepers had orders to draw up a summons against persons gathering liqueur plants. As a matter of fact I have always had, since I have my lease, the gathering of the plants, but when the document was closely examined an omission was noticed, and it was in order to rectify this that the addition to the lease of 18 years which I have was drawn up. 1280

XQ78. Did you not make your request for the purposes of these proceedings and in view of producing that document in the cause now pending before the Court of New York?

A. I do not quite understand the question?

XQ79. Did you not make your request to the administration on the 2d March, 1906, in view of the case now pending before the Court of New York?

A. Why, certainly. I have told you that I considered that everybody considered at Grenoble, at the Prefectoral and Forest Departments, that I had the monopoly of the gathering of the plants. When the written document was closely examined it was noticed that there happened to be an omission about the gathering of the plants in the part of the domain which is not expressly mentioned in the lease already made, and in order to complete my lease I have been given and I am going to be given a new lease. 1281

XQ80. Can you cite any summonses which have

1282 been issued against people who gathered plants before the 2d March, 1906?

A. No, but I know that the agents have had instructions to do so.

XQ81. What agents?

A. The agents of the Prefect and of the Forest Department to summons people who came to gather liqueur plants and compete against the Liquidation. It was the Carthusians who—

XQ82. How is that there was no summons issued?

A. The agents have explained; they are three to guard an immense forest.

XQ83. Will you let me know the decrees poste-
1283 rior to 1900 in which these instructions to which you allude are to be found?

A. I have not said there were any decrees.

XQ84. They were verbal instructions?

A. I do not know how they were given; I was told that instructions had been given.

XQ85. Who told you so?

A. It came to my ears from different parts, from Saint Laurent du Pont.

XQ86. For what part of the mountain group of the Grande Chartreuse has the authorization been given you?

1284 A. To see that, it would be necessary to read the lease—it is the domain of the State.

XQ87. You come back to the lease; it is in the lease then?

A. It would be necessary to read the actual letter giving the concession for the gathering of the plants. The lease grants me the right to gather the plants in the gardens of the monastery and certain parts mentioned in the lease. I asked for and was granted the extension of the right of gathering liqueur plants on the whole of the domain of the State at the Grande Chartreuse.

XQ88. Have you the same right in the communal forests? 1285

A. I have never asked myself that question. If they are under the Forest Department, then yes, unquestionably.

XQ89. You are not better posted than that on the extent of your rights?

A. I considered that I had the right to the gathering on the whole of the State domain; if the State can give the right of gathering in the communal forests, to which you allude, I have it, it is comprised in this concession.

XQ90. Can you declare that you have it? 1286

A. I just said that I do not know whether I have it.

XQ91. What is the area of the domain of the State in the group of the Grande Chartreuse?

A. I do not know.

XQ92. Since 1903, you said, you have the exclusive authorization to gather the plants in the domain of the State. How do you explain that certain plants, for instance vulnerary, is to be found at all the herbalists of Lyons, and in considerable quantities?

By Mr. Kelly: Objection; it is not proved that it was found. 1287

A. I have no knowledge that any was found.

XQ93. How many demands for many pensions have you received on the part of the members of the Order of the Carthusians?

A. I do not believe I have received any. I have received important demands for the restitution of doweries brought by congregationalists; I have not received any demands for pensions.

XQ94. Have you not resisted the demand of Carthusians who claimed, in conformity with the law

1288 of 1901, the restitution of the property brought to the Order of the Carthusians?

A. What do you mean, resisted?

XQ95. Have you not appeared before the Tribunal in order to maintain that the Carthusians who claimed this restitution brought forward a claim to which they had no right?

A. Ah, no, I maintained in the first place that the Carthusians did not all show proof of having brought the property they claimed, and I believed that the Tribunal decided in my favor in a case previous to our suit. In other cases I asserted that we had not to refund the property brought to the Car-

1289 thusians who had gone abroad who continued to serve as dummy parties, because the object of the law is to refund to the Carthusians individually their individual patrimony, and not, in my opinion, to refund to the congregations reinstated abroad the sums that the congregationists had formerly brought into the congregation.

XQ96. Did the Tribunal admit your claim?

A. The Tribunal dismissed my claim.

XQ97. On what grounds did the Tribunal base itself in order to dismiss your claim?

A. It maintained that that was not the spirit of

1290 the law.

XQ98. Did it not decide that the law of the 1st of July, 1901, was not applicable abroad?

A. I do not know whether it was in this judgment that the Tribunal so decided, but in this judgment I do not see in what way that could apply. Tell me to which judgment you refer.

XQ99. I alluded to judgments rendered against some Carthusian Fathers upon a summons to four judgments without exception, and I put to you the question: In all these judgments has not the Tribunal decided that the law of the 1st of July, 1901, was not applicable abroad?

A. It may be that it so decided; I do not see for what reason, I do not clearly remember at the present time. 1291

XQ100. Here is a certified copy of a judgment—

By Mr. Lecouturier: In what case?

By Mr. Bonnet: I am going to read it to you: the Bioret case. Here is the passage to which I alluded:

"Whereas the defendant maintains that "the demand of Bioret is not receivable, the "defendant—that is, you—because he is still "a Carthusian, and that to restore his dowry "to a member of a dissolved congregation re- 1292 "maining a congregationist abroad would be "to reconstitute the property of the congre- "gation, contrary to the object of the law.

"But whereas the legislature has not im- "posed as a condition to the restitution of "dowries that the person entitled thereto "must cease to be a congregationist even "abroad; that in decreeing the dissolution of "non-authorized congregations he meant to "disperse the persons and property in "France, and that this result is attained "when the persons have crossed the frontier 1293 "and a Liquidator has taken possession of "the property—that the law of July 1st, "1901, governs neither property nor persons "beyond French territory."

When you have realized the assets of the Liquidation to whom will you distribute the balance?

A. But before distributing the balance it will be necessary to meet the liabilities.

XQ101. Let us suppose, if you do not mind, the available balance, all expenses paid?

1294 A. I believe, from what I can see, that there will be no balance, when all the expenses are paid.

XQ102. All the expenses will absorb the assets of the Liquidation of the Carthusian Fathers?

A. Oh, I think so. I can quote one claim produced to the liquidation, that of the Tax Department, which alone amounts to a million francs. I know that the Hospital of Saint Laurent du Pont intends to claim in capital the necessary sum to meet the needs of the hospital, and that represents a capital of 700,000 frs. to 800,000 frs. If you add the demands for restitution of dowries made by the Carthusians you will see that the liabilities will be
1295 considerable.

XQ103. It is the Tax Department which will take the greatest share, then?

A. The Tax Department is a creditor which the Carthusians forgot to pay before leaving France.

XQ104. In your opinion, have you to grant pensions to the Carthusians who remain in France, if you have anything remaining?

A. If the Carthusians had made requests for pension within the term fixed by law. I think so.

XQ105. Even if they remained abroad?

A. The granting of the pensions does not depend
1296 on me.

XQ106. I ask you for your opinion?

A. I have no opinion on the subject; it has never been put to me.

XQ107. But as Liquidator, do you not look forward to this contingency?

A. Yes, it might happen.

XQ108. What solution will you then give to this question?

A. I will look into it then.

XQ109. You do not think you ought to give an opinion now?

A. I have not examined the question.

XQ110. What is the spirit of the law concerning the apportionment of the balance of a liquidation? 1297

A. The law is formal; it states that the net assets are to be distributed to those having a right to the same.

XQ111. It is necessary for those having a right to same to return to France and cease to be congregationists?

A. I have no personal opinion to give on that question; I refer to the text of the law.

XQ112. You are the Liquidator, entrusted with applying the law of 1901; you have no personal opinion?

I am not entrusted with distributing the net balance of the assets to the parties entitled thereto, consequently I need have no personal opinion on this point. 1298

XQ113. It is not you who will be entrusted with this apportionment?

A. The apportionment of the assets, no.

XQ114. No?

A. I do not think so.

XQ115. And who will make this apportionment?

A. I know absolutely nothing about it.

XQ116. You are a Liquidator and you have ideas so little clear, so little defined, as to the application of the law of July 1st, 1901? 1299

A. I have the most precise ideas on the mandate that I have to carry out, as to other mandates I do not trouble myself as to what happens.

XQ117. And as to the balance of assets of the liquidation, have you any ideas?

A. No, that is at the present time a question of controversy.

XQ118. What will you do with this money, if any remains?

A. I am obliged to deposit it, as it comes in, at the "Caisse des Dépôts et Consignations."

1300 XQ119. What is that, the Caisse des Dépôts et Consignations?

A. The Caisse des Dépôts et Consignations is an official administration of the State, where all the funds are centered—a series of funds, in conformity with certain laws.

XQ120. We have heard several witnesses, café waiters, butlers, Mr. Frederic, of the "Tour d'Argent," who declared to us that your liqueur was much superior to the liqueur manufactured at Tarragona by the Carthusian Fathers. It would be very interesting to know the opinion of the public, the opinion of the consumer. Would you be dis-
1301 posed to produce all the documents giving the quantity of Chartreuse that you have sold during the last three, six or twelve months. The Carthusians, on their side, would produce the same proof, and the Court would have certain elements for comparison.

A. I think that the comparison would not be at all just, because the Congregation of the Carthusians, actually established abroad and manufacturing the liqueur of the "Pères Chartreux" is extremely rich and has been able to spend considerable on advertising that, moreover it has met in
1302 the shipments of its liqueurs except in France, a short time ago, no obstacle, that it had a pre-existing organization of agents well constituted, so that the consumption of the liqueur of the Carthusian Fathers may be much more important than the consumption of the liqueur manufactured at the Grande Chartreuse without drawing the conclusion from that that the public prefers the liqueur of the Carthusian Fathers to the liqueur manufactured at the Grande Chartreuse.

XQ121. The Court would be able to appreciate these facts all the same; would you be disposed to

furnish to the Court all the documents to which I allude? 1303

A. I will think it over.

XQ122. How long do you want to think it over?

A. That will be seen at the time of the pleadings.

XQ123. You cannot decide that now?

A. No, I cannot decide that right off.

By Mr. Bonnet: Thank you.

Redirect-interrogatories by Mr. Edmond Kelly, representing the plaintiffs:

1304

RDQ1. Are not all funds in litigation deposited at the Caisse des Dépôts and Consignations?

A. All funds in litigation, all the funds of judicial administrators, all funds which are collected by me not only for the Congregations, but for the administration of any case whatsoever which may be confided to me by the Tribunal, are obligatorily deposited at the Caisse des Dépôts & Consignations, which is, as it were, our treasury and cashier.

RDQ2. It is not the Tribunal which will decide between whom you must make the apportionment of the balance? 1305

A. If there is any difficulty it is evidently the Tribunal which will decide it.

RDQ3. Do not the Carthusians possess a Chartreuse at Pavie?

A. Yes, it is even a celebrated historical Chartreuse.

RDQ4. Have you tried to take possession of this Chartreuse?

A. Never.

RDQ5. Do they not possess much other property abroad?

1306 A. There is an important number of Chartreuses abroad.

RDQ6. You have never put forth the claim that these Chartreuses abroad belonged to you?

A. Not for a minute.

RDQ7. Are the keepers men of law, who have studied law?

A. The Forest keepers are men who have evidently but an extremely brief and rudimentary education.

RDQ8. What are the duties of a forest keeper?

A. The duty of a forest keeper should be to watch the forests, to prevent anybody stripping or
1307 spoiling them, to superintend the felling of trees and the workings in the forest.

RDQ9. Is it their duty to carry out leases, to safeguard the rights of persons to whom the State may grant leases concerning the forests?

A. No, that is not their duty.

RDQ10. If you know that anyone goes into the forest, in which you have the right of gathering to pick vulnerary, to whom do you apply in order to have a stop put to this gathering?

A. I have only to have a keeper take oath and tell him to draw up a summons, he will do so—at
1308 my expense.

RDQ11. It is he, the keeper, who would be entrusted with that?

A. Quite so, just like a game keeper.

RDQ12. Are the keepers also entrusted with the carrying out of the Prefectoral decree of 1900, about which you have been questioned?

A. I do not know exactly, it is the Forest Department— That depends on the regulations, I would not dare to state exactly.

Recross-interrogatory by Mr. J. Bonnet, representing the plaintiffs: 1309

RXQ1. The decision of the 19th of July, 1905, of which you demanded the interpretation, did it not give rise to another decision of 27th March, 1906, which declared that the foreign marks in the name of Abbé Rey had not been granted to you by the decision of the 19th of July, 1905?

A. I do not believe that the decision decided exactly what you say. On the 27th of March, 1906, a decision was rendered by the Court of Appeal of Grenoble which declared that there was no cause for an interpretation of the aforesaid decision of July 19th, 1905. This decision, moreover, has been submitted to the Court of Cassation by me. 1310

RXQ2. The decision does not say anything else?

A. You have only to take the "dispostif." I believe that the "dispositif" of the decision says that there are no grounds for interpretation, and dismisses it on other Court.

RXQ3. Does not the decision declare that the question of the foreign marks has not been submitted? 1311

A. It does not declare so in the conclusions, it declared so in the "motifs."

RXQ4. For you a decision or a judgment should only be examined in the "dispositif"?

A. I believe it is a principle of French law that the rule of *res judicata* absolutely only applies to the dispositif of decisions.

RXQ5. It is possible, generally, to understand the dispositif when one has not got this "motifs" in order to throw light on it?

A. In this special case it is very clear. I demand an interpretation, the Court declares that there are no grounds for an interpretation.

1312 RXQ6. Why have you referred the matter to the Court of Cassation?

A. I have referred it to the Court of Cassation because I consider that this decision goes against the principle and the rules of *res judicata* and that there were grounds for an interpretation.

RXQ7. The liquidation, you said will leave no balance to be divided up. There is due, you say, one million to the State. Have you not asked several millions for the mark and the business of the Carthusian Fathers of persons who came and made propositions to you?

1313 A. In the first place I would like to rectify that, because I have not said that the Liquidation will leave nothing. I declared that I thought, at the present state, that no assets will remain. Second point: When anyone comes to me and asks to buy the Chartreuse it is naturally my role, as Liquidator, to sell it as dear as possible. If tomorrow I could sell it for 20 millions, I would do so willingly.

RXQ8. Have you not made a contract with Mr. Marnier for five millions?

A. He should have given me three millions, but Mr. Marnier did not keep to his engagement, I
1314 regret to say.

RXQ9. You acknowledge that in the contract it was a question of three millions?

A. It was a question of three millions for the price of the mark. I add once again that to my great regret Mr. Marnier is not likely to fulfill his contract.

HENRI LECOUTURIER.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1315

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, for Himself and the Other Carthusian Monks,

vs.

THE CUSENIER COMPANY,

In Equity No. 8949. 1316

It is stipulated that the translations forwarded from the American Consulate-General, in Paris, France, and from the United States Consulate in Turin, Italy, are correct translations of the depositions given by the several witnesses therein named; and that the said translations, together with the copy of depositions originally taken in England and forwarded from the United States Consulate-General in London, England, may be used as copy from which to print the record for use in the United States Circuit Court for the Southern District of New York, subject however to correction upon notice and proof; and that the signatures and certificates and the discussions between counsel may be omitted from the printed record. 1317

ELISHA K. CAMP,
Solicitors for Complainants.

HOWSON & HOWSON,
Solicitors for Defendant.

New York, December 12, 1906.

Circuit Court of the United States, 1321

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN

v.

CUSENIER COMPANY.

In Equity 8949
(Chartreuse)

1322

Office of Howson & Howson,
38 Park Row, New York City.
Monday, June 24, 1907, 11:30 A. M.

Testimony for final hearing, taken on behalf of defendant before John A. Shields, Esq., Standing Examiner of this Court, under the Revised Statutes and Equity Rules.

Present:

R. L. SCOTT, Esq., representing Philip Mauro, Esq., for Complainants.
HUBERT HOWSON, Esq., for Defendant. 1323

Counsel for the defendant notes on the record that his request for the production of Mr. Joseph Haan for further cross-examination, having been refused by counsel for complainants, counsel for defendant has caused a subpoena to testify to be served upon Mr. Haan, who, being now present, is examined by Mr. Howson as follows:

(Counsel for complainants states that Mr. Haan was duly and regularly examined as a witness for

1324 complainants herein and offered to counsel for defendant for cross-examination; that the witness was cross-examined and his deposition closed. Therefore counsel for complainant felt himself under no obligation to again produce the witness for further cross-examination.)

By Mr. Howson:

Q1. Since my cross-examination of you, when you were called as a witness in this case on April 18, 1907, facts came to my knowledge of which I was not aware at the time of that cross-examina-
1325 tion, but which led me to believe that truth and justice required that I should ask you some additional questions, and hence the necessity of asking you to attend today under subpoena. When you purchased the Chartreuse mentioned in your previous testimony from Cusenier Company, you were aware, were you not, that the congregation of Carthusian Monks had left La Grande Chartreuse a year or so before?

A. I had heard that they had left France.

Q2. Had you heard that they had established or were establishing arrangements for the manufacture of liqueur in Spain?

1326 A. I don't remember that.

Q3. You at that time understood, did you not, that the French Government or Courts had put the property and business at La Grande Chartreuse into the hands of a Receiver or Liquidator who was carrying on the business?

A. I had no personal interest in the matter and I did not follow the course of the proceedings.

Q4. Cusenier Company represented themselves at that time as the agents for the Liquidator, did they not?

A. No, if I remember right they said to me they would sell me the same Chartreuse, and if there was any trouble, they would take it back, and they did. 1327

Q5. Did they represent to you that the liqueur which they offered had been made by the Monks, or was liqueur which would be the same as made by the Monks.

A. I don't think he said it was made by the Monks. He simply sold me the liqueur and didn't say anything.

Q6. At the time that you returned some of that Chartreuse to Cusenier Company, did you, or did you not give as a reason for doing so to Mr. Dresdner or Cusenier Company, the statement that you returned it because you had been threatened with suit by Batjer & Co.? 1328

A. Well, I got a notice I remember from somebody about infringement. I think we got a notice, but meantime some—I remember well, we had some argument with customers asking me which is the real Chartreuse,—the Chartreuse sold by Cusenier Co., or what they call the Liqueur Peres Chartreux. It is so long ago I can't remember the details.

Q7. Then are we to understand that you do not remember definitely now whether or not at the time Mr. Dresdner sold you that Chartreuse from Cusenier Company, you were told that it had been made under the direction of the representative of the French Government? 1329

A. No, I don't think he said anything about who made it.

Q8. Why did you accept the liqueur, or buy it, if you did not know who made it?

A. When a man deals with a concern, he has the impression that he has the agency,—I think he told me that they represented Chartreuse now.

1380 Q9. Were you shown, or had you seen at that time, the circular letter the same as complainants' Exhibit Aubry Cusenier Letter?

A. I think I did but really I don't know. I think I have seen something like this.

Q10. Referring to your answer to Q6, did you or not give Cusenier Company or Mr. Dresdner, as the reason for returning some of the Chartreuse, the statement that you had been threatened with an infringement suit?

A. I think I did.

Q11. Did you give him any other reason than this one, that you had been threatened with an in-
1381 fringement suit?

A. I think I told him another reason which I mentioned that the public was asking which is the real Chartreuse.

Cross-examination by Mr. Scott:

XQ12. In your former testimony (RDQ17) you said that when you bought this liqueur from the Cusenier Company you were under the impression that you were buying Chartreuse made by the Monks. Is that still your testimony?

1382 A. I told you before that a gentleman came up and told me that he represented Chartreuse, where it was made I do not know.

XQ13. And when you gave this order to Mr. Dresdner, you believed that you were buying genuine Chartreuse, did you not?

A. Yes.

XQ14. And what do you understand to be the genuine Chartreuse?

A. I understand now the Chartreuse made by the Monks is the genuine.

XQ15. You say that you understand now that the Chartreuse made by the Monks is the genuine. Haven't you always understood that the Chartreuse made by the Monks was the genuine liqueur? 1383

A. Yes.

Redirect-examination:

RDQ16. At the time you purchased that liqueur from the Cusenier Company you were aware, were you not, that Batjer & Co. were still the agents for the Monks?

A. Well, I thought they were originally.

1384

Recross-examination:

RXQ17. And when Mr. Dresdner represented to you that the Cusenier Co. were agents for Chartreuse, you came to the conc usion, did you not, that Batjer & Co. were no longer the agents?

A. Yes.

RXQ18. And therefore you placed this order with Cusenier & Co.?

A. Yes.

RDQ19. Before you gave Mr. Dresdner the order for that Chartreuse had you not received a circular from Batjer & Co. with regard to Liqueur Peres Chartreux? 1385

A. I don't remember.

Signature waived.

Adjourned to 2.30 P. M.

1386 Counsel present as before.

2.30 P. M. Met pursuant to adjournment

M. BLANC, a witness called on behalf of defendant, being duly sworn, deposes and says:

Q1. What is your name, age, residence and occupation?

A. M. Blanc; residence, 239 West 48th street, New York City; age, 40; occupation, I am manager of the Hardware Club of New York City, 253 Broadway, and I have been manager since its incorporation, about 1893. Part of my business is to see to
1387 the purchase of wines and liqueurs for the Club. Before becoming manager of the Club, I had been manager of another club for about four years with the same duties, and during that time I have had occasion from time to time to purchase Chartreuse.

Q2. What has been your understanding as to what gives Chartreuse its quality or characteristics?

A. Certain plants—the infusion of certain plants or some such thing. I meant by that an explanation of the word "infusion"—maceration.

Q3. What has been your understanding as to where those plants were to be found?

1388 Objected to as incompetent and immaterial.

A. In the province of France.

Q4. Any particular part of a French province?

A. No.

Q5. Can you explain a little more fully as to what you mean by "Province of France?"

A. Province of France is a geographical division, as county would be here, and I have always understood it to be the Dauphine.

Q7. Referring to the Chartreuse trademark, con-

taining the words "Liqueur fabriqué à la G'de Chartreuse" what has that trademark designated to your mind during the period with which you have been familiar with Chartreuse? 1339

A. The place of manufacture.

Q8. And where was that place of manufacture as you understand it—that is, where is La Grande Chartreuse?

A. In the province of Dauphine—it is in the south east of France, on the frontier, I should say about midway between Nice and—

Q9. In what province?

A. Dauphine.

Q10. I find in the Century dictionary the following definition of Chartreuse: 1340

"A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially nettles, growing on the Alps. It derives its name from the celebrated Monastery of La Grande Chartreuse in France, where it is made." Are we to understand from your testimony that that definition agrees with your understanding of Chartreuse?

Objected to as leading.

1341

A. Yes.

Q11. From your experience with the consumption of Chartreuse and consumers of it, what is your understanding or belief as to the knowledge or view of those consumers as to whether or not Chartreuse was made by the Monks or a commercial company.

Objected to as incompetent.

A. No knowledge on the part of a consumer.

Q12. Your answer is not very clear because it

1342 is so laconic. Will you please explain yourself a little more fully?

A. Well there are many other cordials which are sold to consumers so far as I know, and of which they know nothing of the maker—such cordials as Benedictine, Esterel, Nenina. As far as I know I don't believe the consumers know or care to know who the makers are.

Q13. Will you please make your explanation of your answer to Q11 a little more explicit as to Chartreuse, that is, your understanding of the views of consumers touching the manufacture of Chartreuse.

1343 (Same objection).

A. I could not explain any more than to repeat it,—that my belief is that they neither knew or care to know who the makers are. They are indifferent about it.

No Cross-examination.

Signature waived.

Adjourned to Tuesday, at 11 A. M.

1344

Tuesday, June 25th, 1907. 1345

Met pursuant to adjournment.

Counsel present as before.

LEON MUNDEL, a witness, called on behalf of the defendant, being duly sworn, deposes and says:
By Mr. Howson:

Q1. What is your name, age, residence and occupation?

Leon Mundel; age, 42; residence, 64 East 94th street, N. Y. City; I am a wine steward of the Hotel Manhattan, and I have occupied that position 1346
ten years.

Q2. During that time have you or not had occasion to purchase for use at your hotel and to sell to your customers various liqueurs, including Chartreuse?

A. Yes.

Q3. About three or four years ago, did you hear about the Monks leaving La Grande Chartreuse, and that the Government put the property and Chartreuse business into the hands of a receiver or liquidator?

A. I did.

Q4. Did you at that time learn who became the 1347
agents for the liquidator in this country?

A. I remember that Mr. Aubry told me that he was to be the agent.

Q5. Did you buy any Government Chartreuse from Mr. Aubry or his company?

A. I did.

Q6. And sold it to your customers?

A. Yes.

Q7. Did you have any complaints?

A. No.

Q8. Did you try the Government Chartreuse yourself and if you did, what did you think of it?

1348 A. Yes, I tried it; I think it was all right.

Q9. I show you the old Chartreuse trademark, and I ask you what that trademark has come to designate according to your understanding?

A. That the liqueur is made at La Grande Chartreuse.

Q10. What, if anything, do you know or have you heard in times past, as to claims made for the Monks that the liqueur Chartreuse could be made nowhere else than at La Grande Chartreuse?

A. That there is only one place where they make the original Chartreuse, and that is by the Monks at La Grande Chartreuse.

1349 Q11. And on what ground have they made their claim?

A. Because the herbs which they are use and growing in and around the Chartreuse; there may be some other secret—I don't know—the herbs are growing there.

Q12. What was the reason you were willing to accept the Government Chartreuse which you purchased from Cusenier Co.?

A. Because it is made in the original place.

Cross-examination by Mr. Scott:

XQ13. You have said that you tried the Gov-
1350 ernment Chartreuse and that you think it is all right. Are you able to distinguish between the Government Chartreuse and the liqueur manufactured by the Monks?

A. I think I could tell the difference, yes.

XQ14. Then we will provide samples of each of these liqueurs and ask you to make the test, if you are willing to do so.

A. I told you yesterday I would not go into anything like that—(addressed to Mr. Howson).

XQ15. Because two things are made at the same place and by different people, does it follow that the

resulting product is the same? 1351

A. No.

XQ16. You have testified that you bought Chartreuse from Cusenier Co. because it was made "in the original place." Was that for you a sufficient recommendation of the quality of the liqueur?

A. Yes.

Redirect-examination:

RDQ17. In saying that you are able to distinguish between the Government Chartreuse and the liqueur manufactured by the Monks, did you refer to the liqueur which used to be made at La Grande Chartreuse by the Monks or that which they now make or have made at Tarragone? 1352

Question objected to as incompetent and immaterial unless the witness wants to make the test.

A. Yes, the one they make now. I am willing to make that test, but I wouldn't do it now. I am not willing to taste any liqueur to-day; my palate is not ready for it. You can notify me any time you like—you can telephone me—I shall expect it and then I shall be ready for it. 1353

Signature waived.

1284

1354 FRANCOIS CHAUVELOT, a witness called on behalf of the defendant, being duly sworn, deposes and says:

By Mr. Howson:

Q1. What is your name, age, residence and occupation?

A. Francois Chauvelot; aged 33; residence, 201½ West 24th street, N. Y. City; occupation, wholesale and retail importer and dealer in wines and liqueurs, at 429 6th avenue. I have been in that business for about ten years.

1355 Q2. During that time have you or not had occasion to purchase for your business and to sell to your customers various liqueurs, including Chartreuse?

A. Yes.

Q3. About three or four years ago did you hear about the Monks leaving La Grande Chartreuse, and that the French Government put the Chartreuse business into the hands of a receiver or liquidator?

A. Yes.

Q. Who, if you know, became the agents in this

1356 country for that Government Chartreuse?

A. Cusenier Company—Aubry—Jules Aubry.

Q5. Did you buy any of that French Government Chartreuse from Mr. Aubry or his Co.?

A. Yes.

Q6. Can you say about how much?

A. About 50 cases.

Q7. Did you have any complaints about it from your customers?

A. I never had any.

Q8. Do you remember if any of your customers ever came in with a request for any more of that French Government Chartreuse?

A. Yes. 1357

Q9. I show you the old Chartreuse trademark and I ask you what that trademark has come to designate according to your understanding?

A. Well, it shows me that it is the original stuff.

Q10. Has that trademark come to signify to you the place of manufacture or the manufacturer?

A. The place of manufacture, more.

Q11. What, if anything, have you heard in times past as to claims made for the Monks that Chartreuse could be made no where else than at La Grande Chartreuse?

(Objected to as leading). 1358

A. I don't quite understand the question, but I think there is no other place where they make the Chartreuse than at that place.

Q12. Why?

A. Because it is the place where they get all the herbs—the main part of which the Chartreuse is made.

Q13. What was the reason you were willing to accept the Government Chartreuse which you purchased from Mr. Aubry or the Cusenier Co.?

A. I think it is much better than the other kind. 1359

Q13½. What do you mean by the other kind?

A. Peres Chartreux.

Cross-examination by Mr. Scott:

XQ14. About when did you buy those 50 cases of Chartreuse from the Cusenier Co.?

A. I don't remember exactly—about two years ago.

XQ15. Have you bought any more Chartreuse of the Cusenier Co. since that lot?

A. No. They told me they had an injunction on it—they could not sell any more.

XQ16. When customers came into your place and

1360 asked for Chartreuse you sold them this liqueur that you bought from the Cusenier Co., did you?

A. Yes.

XQ17. In your answer to Q9 you spoke of "the original stuff." What do you mean by that expression?

A. That is the way the bottle was always presented to the public—and the customer.

Signature waived.

1361 Office of Howson & Howson,
38 Park Row, N. Y. City.
Thursday, June 27, 1907.

Met pursuant to adjournment.
Counsel present as before.

RAYMOND ORTEIG, a witness, called on behalf of defendant, being duly sworn, deposes and says:

By Mr. Howson:

1362 Q1. What is your name, age, residence and occupation?

A. Name, Raymond Orteig; age, 37; residence, 15 Fifth avenue, N. Y. I am one of the proprietors of the Hotel Lafayette and Hotel Brevort, Fifth avenue and Eighth street and Ninth street and University place. I have been such part proprietor for the past five years. For some years previous to that I was manager and also interested in the Hotel Martin at Ninth street and University Place.

Q2. During those years have you or not had occasion to purchase for use at your hotels and to

sell to your customers Chartreuse amongst other liqueurs? 1363

A. Yes, sir.

Q3. About three or four years ago, did you hear about the Monks leaving La Grande Chartreuse and that the Government put the property and Chartreuse business there into the hands of a Liquidator or Receiver?

A. Yes, sir.

Q4. Did you learn at that time who became the agent for the Liquidator in this country. Who was it?

A. Yes, sir, Jules Aubry.

Q5. And as one of the ways in which this matter of the Monks leaving the Grande Chartreuse having been brought to your attention, did you receive or see one of these Batjer circulars of October 10th, 1904, now shown you? 1364

A. Yes, sir, I received one of those.

Q6. And did you also receive one of these Aubry Cusenier circulars of October 25th, 1904, the same as Complainants' Exhibit Aubry Cusenier Co. Letter?

A. Yes, sir.

Q7. Did you buy any of the Government Chartreuse from Mr. Aubry or his Co.?

A. Yes, sir. 1365

Q8. And did you sell it to your customers?

A. Yes, sir.

Q9. Did you have any complaints as to the Government Chartreuse not being satisfactory?

A. Well, there were a few discussions as to which was the best—some were in favor of the Government Chartreuse—a few of the others.

Q10. What liqueur do you mean by "the other?"

A. The one that is made in Spain.

Q12. What was the general impression conveyed to you by your customers as to whether or not the

1366 Government Chartreuse was practically the same as that which had been made previously at the Grande Chartreuse by the Monks?

A. It was about the same.

Q13. Did you yourself try it at the time, and what did you find?

A. I have tried both—the Government Chartreuse and the one made in Spain. I found that the Government Chartreuse was the best—we were six testing and five were in favor of the Government Chartreuse.

Q14. You mean, do you, that there were six persons testing the liqueur at the same time and five
1367 of those persons preferred the Government Chartreuse to that made at Tarragone?

A. Yes.

Q15. About when was that and where?

A. It is about three years ago at the Hotel Lafayette.

Q16. I show you the old Chartreuse trademark and I ask you what that trademark has come to designate to you, that is, does it designate to you the place of manufacture or the manufacturer?

A. The place where it is manufactured in France, in the Isere.

1368 Q17. What if anything, have you heard in times past, as to claims made for the Monks that Chartreuse could be made no where else than at La Grande Chartreuse?

(Objected to as leading).

A. That was the general opinion that I heard all round previous to their departure.

Q18. On what ground was that claim made, if you know?

A. Well, they claimed that the herbs of which this liqueur was made only grew in a certain place in France—a place called Saint Bruno.

Q19. Is that where La Grande Chartreuse is situated?

A. It is nearby there. 1369

Cross-examination by Mr. Scott:

XQ20. For how many years altogether have you been interested in and connected with hotels and restaurants?

A. About 24 years.

XQ21. During all this time have you served your customers with a liqueur known as Chartreuse?

A. Yes, sir.

XQ22. When did you buy the Chartreuse of the Cusenier Co.?

A. I think it was around 1904.

XQ23. How many orders did you place with this Co. for their liqueur? 1370

A. I suppose it is three—three.

XQ24. Will you give the dates, as near as you can remember, of the orders?

A. We gave a first order of five cases at the time we received their circular; the second one I could not say—it may be three months after; and the third one may be three months later or four months —I could not swear to the dates—that is about.

XQ25. How many cases did you order at the time you gave the second and third orders?

A. Five cases each time.

XQ26. Since giving the third order you have not given another one? 1371

A. I have given another one but it was not delivered.

XQ27. What reason was given you why it was not delivered?

A. They had some injunction served on them and they could not deliver it.

XQ28. Have you any of the liqueur bought from Cusenier Co. on hand now?

A. No, sir.

XQ29. How long ago did you use up the last of it?

A. About a year ago.

1372 XQ30. Previous to receiving this first order from the Cusenier Co. who did you buy your Chartreuse from?

A. From Acker-Merrall.

XQ31. Was it always bought from Acker-Merrall?

A. Sometimes from Park & Tilford; we deal with both houses.

XQ32. When did you buy your last lot from either of these houses?

A. We buy it right along, just now.

XQ33. During the time that you had the liqueur of the Cusenier Co. in stock, did you have liqueur
1373 made by the Monks?

A. Yes, sir.

XQ34. When a customer came into your place of business and ordered Chartreuse, what did you give him?

A. The Government Chartreuse.

XQ35. What was the price per case that you paid the Cusenier Co. from the liqueur you bought from them?

A. If I remember well, it is $24.50—I am talking about the yellow just now.

XQ36. Was there any reduction from this price
1374 in five case lots?

A. I don't remember. I think it was a dollar more than the old price.

XQ37. According to your best recollection, you paid Cusenier Co. $122.50 for each of these lots of five cases?

A. Yes, sir.

Redirect-examination:

RDQ38. When in answer to XQ32, you say you buy liqueur right along from Acker-Merrall or Park & Tilford, just now, you mean, do you not, this Liqueur Peres Chartreux under this label Defendant's Exhibit Complainant's New Label?

A. Yes, sir.

Signature waived.

JULES AUBRY, a witness called on behalf of defendant, being duly sworn, deposes and says: 1375

By Mr. Howson:

Q1. What is your name, age, residence and occupation?

A. Jules Aubry; age, 35; residence, New York City, 193 Second avenue; I am vice-president of Cusenier Co., defendant in this case.

Q2. It has been stipulated in this case that the defendant offered for sale and sold in the United States liqueur in bottles identical with Complainant's Exhibit Defendant's Liqueur, and that such offering for sale and sale were prior to the entry of the injunction order in January, 1905, in this cause. It is a fact, is it not, that all such liqueur sold or offered for sale by the defendant as stipulated, has been liqueur which you have received from La Grande Chartreuse, France, as made there under the directios of the Liquidator, Henri Lecouturier? 1376

A. It is a fact.

Q3. Have you had any complaints that the Liquidator's Chartreuse which you so sold was not the same as the Chartreuse previously made at La Grande Chartreuse by the Monks? 1377

A. Not that I can remember.

Q4. It has also been stipulated in this case under date of Apr. 18, 1907, that defendant herein has not sold or offered for sale Liqueur under the Chartreuse trademarks whether with or without the sub-label authorized by this Court, and it was agreed that Jules Aubry, if called, would testify that the reason why his company had not used said sub-label was that it was not authorized to do so by the Liquidator, Henri Lecouturier. That stipulation

1378 was quite correct, was it not, at the time it was made, April 18, 1907?

A. It was correct.

Q5. What was the defendant's wish in regard to putting out the liqueur with the sub-label authorized by this Court?

A. We wanted to put it out with the sub-label, but we were not authorized by Lecouturier to do so.

Q6. Since April 18, 1907, have you taken any steps to get permission to put out the liqueur under the said trademark with the said sub-labels?

1379 A. I have made application to the Compagnie Fermiere de la Grande Chartreuse who finally consented to the use of the sub-label.

Q7. The Compagnie Fermiere de la Grande Chartreuse is a French Company which has purchased the Chartreuse business and Chartreuse trademarks from the Liquidator, Lecouturier. Is that it?

A. Yes.

Q8. And according to your understanding that Compagnie Fermiere de la Grand Chartreuse is carrying on the business of making Chartreuse at La Grande Chartreuse, France. Is that it?

A. It is correct.

1380 Q9. Will you please produce one of the bottles with the sub-label as you propose to put it out on the market now?

A. Here is one of the bottles.

Counsel for defendant offers in evidence the bottle produced by the witness and the same is marked "Defendant's Chartreuse with sub-label."

Q10. I notice that this sub-label speaks of the liqueur as made under the direction of M. Lecouturier, whereas you say that the business at La Grande Chartreuse is now in the hands of his successor, Compagnie Fermiere de la Grande Char-



GREEN VELLOW

BÄTJER & COMPANY

IMPORTERS

45 Broadway and 17 to 21 Trinity Place

NEW YORK, October 10, 1904.

Dear Sir:

The Carthusian Monks (Pères Chartreux) having located at Tarragona, Spain, since their expulsion from France, consequent upon the enforcement of the so-called Associations Act, and there re-commenced the manufacture of the famous Liqueur formerly produced by them at the Monastery of La Grande Chartreuse, we beg to advise that the Liqueur will in the future be placed on the market under the label of **LIQUEUR PERES CHARTREUX**, and in a new style of bottle, as per fac-similes appearing above. The change in the cutting-up of the goods has been found necessary, owing to the

Dear Sir:

The Carthusian Monks (Pères Chartreux) having located at Tarragona, Spain, since their expulsion from France, consequent upon the enforcement of the so-called Associations Act, and there re-commenced the manufacture of the famous Liqueur formerly produced by them at the Monastery of La Grande Chartreuse, we beg to advise that the Liqueur will in the future be placed on the market under the label of **LIQUEUR PERES CHARTREUX,** and in a new style of bottle, as per fac-similes appearing above. The change in the putting-up of the goods has been found necessary, owing to the loss by the Monks of their French domicile; but no one knows the secret of how to manufacture the Liqueur except the Monks, a process which they have successfully guarded for centuries up to the present time, and the article shipped by them now from Tarragona, Spain, is the only one that is genuine and of their manufacture. While formerly the Liqueur derived its name from the Monastery of La Grande Chartreuse, circumstances have rendered it necessary, under the new conditions, to name it **LIQUEUR PÈRES CHARTREUX,** after the order of Monks owning the secret process employed in its manufacture.

The prices for **LIQUEUR PÈRES CHARTREUX** will be as follows:

Yellow,	quarts, per Case	$23.50
"	pints, "	25.00
Green,	quarts, "	29.00
"	pints, "	30.50

Terms, net cash.

Discount for 5-Case lots, $1.00 per Case.

The extensive system of advertising in Monthly Magazines and Weekly Illustrated Papers, employed on behalf of the Grande Chartreuse, will be continued in the interest of its legitimate and only successor, **LIQUEUR PÈRES CHARTREUX.**

Very truly yours,

BÄTJER & CO.,

Sole Agents for the United States, its Island Possessions and Cuba.

treuse. Will you please explain this? 1381

A. This is a botttle of the remainder of the lot received in 1904 from Lecouturier.

Q11. From your experience with the liqueur trade, what in your opinion, do the Chartreuse trademarks signify—the manufacturer or the place of manufacture?

A. The place of manufacture.

Q12. What, if anything, do you know as to claims made for the Monks in times past that Chartreuse could not be made elsewhere that at La Grande Chartreuse?

(Objected to as a leading question).

A. They always said that they could not make 1382
Chartreuse elsewhere but at La Grande Chartreuse.

Q13. Why?

A. On account of the fact that there only grew the plants that gave the liqueur the exact flavor.

Q14. Do you recall having seen before this Batjer circular of October 10, 1904?

A. I remember having seen it at the time it came out.

(Counsel for defendant offers in evidence the Batjer circular of October 10, 1904, and the same is marked "Defendant's Exhibit 1383
Batjer Circular of 1904.")

(It is stipulated on the part of complainant that this circular at or about its date, was sent out by Batjer & Co. to wholesale liqueur dealers in different parts of the United States, and to the few retail dealers in this city to whom Batjer & Co. sold directly).

Q15. I notice that this ciruclar of Batjer & Co., Oct. 10, 1904, uses the expression "while formerly the liqueur derived its name from the Monastery of

1884 La Grande Chartreuse," what if anything do you know, as to the endeavor of the Monks to associate the Liqueur Peres Chartreux now made by them with its present place of manufacture?

A. I suppose they want the public to understand that the liqueur they make at their new place is the same as the one they manufactured while they were at La Grande Chartreuse.

Q16. I think you have not understood my question. By "present place of manufacture" I meant Tarragone, Spain, where the Liqueur Peres Chartreux is made. Have you or not seen in French journals the advertisement which I now show you,

1885 as appearing on p. VI of La Vie Au Grande Air, April 20, 1907?

A. Well, yes, I have seen several of these in different French periodicals.

The translation of this advertisement is:

"The Peres Chartreux dispossessed in France of their former trademarks sold at auction have carried away their secret and manufacture at Tarragone.

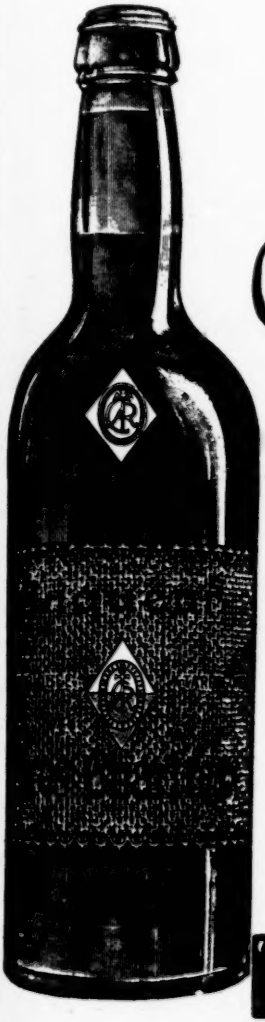
Insist upon this new label when asking for the

1886

"Liqueur Peres Chartreux"
(Tarragone)
or simply
"A Tarragone."

And alongside this is a picture of the bottle with a label the same as the upper part of defendant's Exhibit Complainants' New Label, and which bears the words "Liqueur Fabriquée a Tarragone par les Peres Chartreux."

Q17. Have you yourself tested the Government



Les

Pères Chartreux

dépossédés
pour la France de
leurs anciennes marques
vendues aux enchères

ont emporté leur secret

et fabriquent à **TARRAGONE**

Exiger cette nouvelle bouteille en demandant la

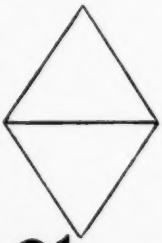
"LIQUEUR DES PÈRES CHARTREUX"
(TARRAGONE)
ou simplement

"Une Tarragone"

DEFENDANT'S EXHIBIT.

Complainant's New Label.

Liqueur

FABRIQUÉE  A TARRAGONE

PAR LES

Pères Chartreux

This Liqueur is the only one identically the same as that made at the Monastery of the Grande-Chartreuse in France, previous to the expulsion of the Monks, who have kept intact the secret of its manufacture. It is now made by the same Monks in Spain, whence it is shipped direct to the United States through **Messrs. BATJER & Cy,** New-York, Sole Agents for the sale of the products of the Pères Chartreux in United States.

CAUTION. — None is guaranteed genuine in the United States, unless bearing the above label of which this notice forms part

Chartreuse which was offered and sold by the defendant in 1904, and did you, or not, find it to have the true Chartreuse flavor?

A. I have tested it, and found out that it had the true Chartreuse flavor.

Q18. In connection with the liqueur which you are about to put out with the authorized sub-label and of which a bottle has been offered in evidence as Defendant's Exhibit "Defendant's Chartreuse with Sub-label," are you or not preparing to issue a circular letter offering it to the trade?

A. I am and here is a specimen of it.

(Counsel for defendant offers in evidence circular produced and referred to by the witness and the same is marked Defendant's Exhibit "Defendant's Proposed Circular.")

Counsel for defendant offers in evidence the advertisement referred to in answer to Q16, in the Journal La Vie Au Grande Air, and the same is marked Defendant's Exhibit "Peres Chartreux Advertisement."

Counsel for defendant also offers in evidence the bottle of liqueur produced and referred to in connection with the cross-examination of complainants' witnesses April 18, 1907, and succeeding days, and there marked for identification "Defendant's Exhibit Complainants' New Label" and the same is now marked ("Defendant's Exhibit Complainants' New Label.")

Counsel for defendant also offers in evidence the Batjer price list produced and referred to in connection with the cross-examination of complainants' witness Mr. Batjer, Apr. 18, 1907, and then marked for identification "Defendant's Exhibit Batjer Price

1890 List," and the same is now marked ("Defendant's Exhibit Batjer Price List.")

Cross-examination by Mr. Scott:

XQ19. When did the Compagnie Fermiere de la Grande Chartreuse become the successor of Mr. Lecouturier?

A. Sometime in 1906—I don't remember the exact date—I think it was sometime in July, 1906, that negotiations began in 1906—I don't know exactly when the sale was made, that is when the Compagnie Fermiere actually succeeded to the business.
1891 I think it was sometime between July and the end of the year.

XQ20. In your answer to Q4, you stated that it is correct that your company did not put out the Chartreuse manufactured under the direction of the Liquidator because the Liquidator did not authorize your Co. to use the sub-label provided for in the injunction order of July, 1905. Was application actually made to the Liquidator to allow you to put out Chartreuse with this sub-label attached?

A. Yes.

1892 XQ21. About when was this application made to the Liquidator?

A. Soon after the—I should think around July or August, 1905,—soon after the order was entered.

XQ22. Were you aware of an agreement made between Counsel for the respective parties to this cause to the effect that your company would not put out any of its liqueur under the old Chartreuse trademarks pending renewal of a motion for preliminary injunction against the use of such trademarks?

A. I don't think I was because I was in Europe at that time.

XQ23. What is the source of your knowledge that the Monks had formerly made claims that the Chartreuse could not be made elsewhere than at the Grande Chartreuse in France? 1893

A. I had heard at times, and over again in Europe, and they have mentioned the facts themselves in the different suits they had against imitators.

XQ24. When you were selling the Chartreuse manufactured by the Liquidator what was the list price of a case of quart bottles of the Yellow Liqueur.

A. $25 a case.

XQ25. Was there any discount from this price on five case lots, and if so, how much? 1894

A. Yes, $1.50 a case.

XQ26. Was there any further discount?

A. No. I think I made a mistake about the discount of $1.50. I think it was $1 a case.

XQ27. If there had been any complaints against the quality of the liqueur sold by your company, would you have heard of them?

A. I suppose I would, but I don't remember having heard of any.

Signature waived.

1895

1896 LEONARD DRESDNER, a witness called on behalf of the defendant, being duly sworn, deposes and says:

By Mr. Howson:

Q1. What is your name, age, residence and occupation?

A. Leonard Dresdner; age, 29; residence, 253 Halsey street, Brooklyn; I am a traveling representative of the Cusenier Co.

Q2. Have you or not had to do with the taking of orders for the liqueur offered by Cusenier Co.?

1897 A. Yes, sir.

Q3. Did you take orders for the Government Chartreuse of the Cusenier Co. in the latter part of 1904?

A. Yes, sir.

Q4. Are you the Mr. Dresdner who made a sale of such Chartreuse to Mr. Joseph Haan for R. M. Haan?

A. Yes.

Q5. When was that sale made and how are you able to fix the date?

A. October 31st, 1904; I fix it by my order slip

1898 No. 265, which I here produce.

(Counsel for defendant offers in evidence the order slip just referred to by the witness and the same is marked "Defendant's Exhibit Haan Order Slip.")

Q6. Prior to making that sale, had Cusenier Co. sent out its circular letter "Complainants' Exhibit Aubry Cusenier Letter" dated Oct. 25, 1904?

A. Yes, sir.

Q7. Please look at Defendant's Exhibit Batjer Circular of Oct. 10, 1904, and say whether or not

that circular had come to your attention before 1399
Cusenier sent out their circular of Oct. 25, 1904?

A. Yes, sir, it had.

Q8. In making this sale to Mr. Joseph Haan, did you or not explain that what you were offering was not the Monks liqueur but government Chartreuse?

A. Yes, sir, I told him that.

Q9. In what way?

A. I had facsimile in the shape of a cut taken from "Bonfort's Wine and Spirit Circular," (the Authentic Liqueur Journal) of the Liqueur Peres Chartreux bottle, and also a cut of the La Grande Chartreuse bottle.

Q10. Did you show Mr. Joseph Haan at the time 1400
you procured the order those cuts of the two bottles, and if yes, why did you show them to him?

A. At that time I was making special efforts to place the Government Chartreuse on the New York City market, and I showed Mr. Haan and the other prospective buyers both these cuts and explained to them the difference between the two liqueurs.

Q11. By the "difference between the two liqueurs" you mean as to where they were made?

A. Yes, as to where they were made and by whom.

Q12. Mr. Haan has testified that in making the sale you told him that if there was any trouble you 1401
would take it back, and you afterwards did take it back Does that agree with your recollection?

A. Yes, sir.

Q13. What if any reason was given by Mr. Haan for sending back the unsold portion of the liqueur?

A. He wrote us a letter saying that he had been served with an order of injunction.

Q14*. If you have that letter, please produce it.

A. Here it is.

(The letter produced and referred to by the witness and dated January 17, 1905, is

1402 offered in evidence and the same is marked "Defendant's Exhibit Haan's Letter.")

Q15. Did Mr. Joseph Haan, or any of his firm, or anyone representing his firm, ever give you any other reason than that mentioned in his letter for returning the liqueur?

A. No, sir.

Q16. Did Mr. Joseph Haan, or his firm, or anyone representing his firm, ever say to you or your firm so far as you know, that there had been any complaint as to the taste or quality of the Government Chartreuse which you had sold him?

1403 A. No, sir.

Q17. Have you had any complaints from any of your customers to whom you have sold Government Chartreuse that it did not have the true Chartreuse flavor?

A. No, sir.

Cross-examination by Mr. Scott:

XQ18. You are familiar, are you not, with the wording of the Aubry-Cusenier Circular letter of October, 1904?

1404 A. Yes.

XQ19. The representations you made to Mr. Joseph Haan, at the time you took an order from him, were practically the same as the statements made in this circular letter?

A. Exactly the same.

XQ20. Did you assert to Mr. Haan that the liqueur which you tried to sell him was the genuine and original Chartreuse?

A. No, sir.

XQ21. What do you consider as the genuine and original Chartreuse?

A. The genuine Chartreuse in my estimation is the liqueur made at the Monastery of La Grande Chartreuse in France. At that time there were three Chartreuse on the market; one was made by the Monks at the Monastery at La Grande Chartreuse; another was made under the direction of M. Lecouturier at La Grande Chartreuse, and the Liqueur Peres Chartreux made by a company in Spain under the direction of the Carthusian Monks. 1405

XQ22. You say that you did not assert to Mr. Haan or lead him to believe that the liqueur you were trying to sell him was the genuine Chartreuse?

A. I told him it was the genuine Chartreuse; I did not tell him it was the original. 1406

Redirect-examination:

RDQ23. Did you make it clear to Mr. Haan who made that Chartreuse which you offered him?

A. Yes, sir. It was made clear with illustrations and the cuts and my firm made it clear with their circular of October 25, 1904, which preceded the sale to Mr. Haan.

RDQ24. And by "genuine Chartreuse," you mean Chartreuse made at the Monastery of La Grande Chartreuse as distinguished from liqueur made anywhere else. Is that it? 1407

A. Yes, sir.

Recross-examination:

RXQ25. If you should start making a liqueur at La Grande Chartreuse in France, and sell it under the name "Chartreuse" you would consider it to be genuine Chartreuse then, would you?

A. Yes, sir.

Signature waived.

1408 Counsel for defendant offers in evidence certified copies of the Judgments of the Court of Cassation, Paris, France, dated July 31, 1906, on the appeal of Rey and the appeal of Garnier from the decision of the Court of Appeals of Grenoble, of July 19, 1905, in Lecouturier v. Rey, already offered in evidence, and it is agreed that they may be taken as duly certified and proved, and may be filed and used in this case as Defendant's Exhibits 21, 22, respectively, subject to correction on notice and proof.

1409 Counsel for defendant also offers in evidence copy of translation of the French Associations Law of 1901, and the same is marked "Defendant's Exhibit No. 23," and it is agreed that it may be used in this cause as if proved and certified subject to correction on notice and proof.

Counsel for defendant offers in evidence centified copy of the Judgment Roll in the action between Union Agricola and Henri Lecouturier, Liquidator, in the Civil Tribunal of Grenoble, France, and embracing the Judgment of May 18, 1905, in that action, heretofore offered in evidence by complainants, and the same is marked "Defendant's Exhibit No. 24, Judgment Roll."

1410

Counsel for defendant also produced in connection with the said Exhibit No. 24 a translation thereof, and the same is marked "Defendant's Exhibit No. 24A."

By Mr. Scott:

Counsel for complainants has no objection to the introduction of the judgment itself—in fact, the judgment has already been introduced in evidence as "Complainant's Exhibit S."

The decision of Judge Lacombe of June 10, 1907, on defendant's motion to take further testimony abroad as to what was or rather was not before the Court of Grenoble in the proceedings leading up to this judgment of May 18, 1905, denies defendant's motion but says "properly authenticated copies may be produced," of "what would be the equivalent of what we call the judgment roll." Counsel for complainants understands from Mr. Howson's affidavit of May 20, 1907, in support of the aforesaid motion, and also from the argument of defendant's counsel at the time of hearing the motion, that the "equivalent of what we call the judgment roll" is not procurable. The document produced is therefore objected to as being incomplete and not meeting the requirements of the Court. It is further objected to on the ground that, even if it were complete, defendant now has no right to introduce it as an exhibit because the order entered under date of June 18, 1907, on the aforesaid motion, simply recites "it is ordered that said motion be, and it hereby is, denied"—defendant having failed to have the order include provision for the introduction of this document; it is also objected to as being incompetent, on the ground of seeking to modify or impeach a decree of a Court having competent jurisdiction over the parties and subject-matter; further objection is made on the ground that all the document, except the judgment itself, is irrelevant and immaterial to this case; and, finally, objection is made to the admission of the document as an exhibit on the ground of laches—if put in evidence at all, it should have been introduced two years ago during the taking of testimony abroad.

1411

1412

1413

1414 Without waiving the foregoing objections, counsel for complainants stipulates that the translation of the document in question now produced by counsel for defendant is a correct translation, subject, however, to correction by the original upon notice.

Counsel for defendant suggests that the understanding of counsel for complainants, of Mr. Howson's affidavit of May 20, 1907, and of his argument, is not warranted.

Counsel for defendant also offers in evidence certified copy of the Judgment of the Landgericht of Hamburg, Germany, dated
1415 February 23, 1906, in the action between Lecouturier, Liquidator, and Celestin Marius Rey, and the same is marked "Defendant's Exhibit No. 25, Hamburg Judgment," and in connection therewith counsel for defendant offers translation of said Exhibit No. 25, Hamburg Judgment, and the same is marked "Defendant's Exhibit No. 25A."

Counsel for complainants objects to the introduction in evidence of this Hamburg Judgment as being irrelevant and immaterial and incompetent to prove any matters at issue in this case.

1416 Without waiving the foregoing objections, counsel for complainants stipulates that the translation of the document in question, now produced by counsel for defendant, is a correct translation, subject, however, to correction by the original upon notice.

It is hereby stipulated by and between counsel for the respective parties hereto that translations into English of the following Exhibits may be printed in the record in place of the originals and with the same force and effect as the originals, subject to correc-

tion upon notice and proof, and further subject to the objections, if any, made to the originals: 1417

Complainants' Exhibit S, Judgment of the Court of Grenoble, of May 18, 1905;

Complainants' Exhibit 22, Judgment of the Court of Appeals of Grenoble of December 12, 1905;

Complainants' Exhibit 23, Judgment of the Court of Appeals of Grenoble of March 27, 1906;

Complainants' Exhibit 24, Opinion by Weiss;

Complainants' Exhibit 28, Opinion by Glasson and Weiss; 1418

Complainants' Exhibit 26, Buenos Aires Judgment;

Complainants' Exhibit 27, Decree of the Swiss Tribunal;

Complainants' Exhibit 29, Declaration for Correction of Swiss Decree;

Defendant's Exhibit 14, Extracts from Jurisprudence.

Defendant's Exhibit 15, Dournon Report;

Defendant's Exhibit No. 12, Judgment of July 19, 1905.

Defendant's Exhibits No. 21 and 22, Judgments of the Court of Cassation. 1419

Defendant's Exhibit 24, Judgment Roll.

Defendant's Exhibit 25, Hamburg Judgment.

It is also agreed that the certifications and legalizations of these certified exhibits may be omitted from the printed record.

Adjourned to the office of Mrs. R. L. Luce, Room 80, Equitable Building, 150 Devonshire street, Boston, Friday, June 28th, 1907, at 10.30 a. m.

1420 CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN v. CUSENIER COMPANY.	In Equity 8949 (Chartreuse)

1421

Testimony for final hearing taken on behalf of defendant before Gertrude R. Luce, Special Commissioner and Special Examiner by consent, at her office, Room 80, Equitable Building, 150 Devonshire street, Boston, under the revised statutes and Equity Rules, Friday, June 28th, 1907, 10 a. m.

Met pursuant to agreement.

Present: R. L. SCOTT, Esq., representing Philip Mauro, Esq., for Complainants.
HUBERT HOWSON, Esq., for Defendant.

1422

It is agreed that the following testimony on behalf of defendant may be taken before the above-named Gertrude R. Luce with the same force and effect as if she had been appointed Special Examiner by order of Court, and either party may enter an order to that effect *nunc pro tunc* as of this date without notice.

WALLACE L. PIERCE, a witness called on behalf of defendant, being duly sworn, deposes and says:

By Mr. Howson: 1423

Q1. What is your name, age, residence and occupation?

A. Wallace L. Pierce; I am 54 years of age; I reside in Boston, Massachusetts; I am the head of S. S. Pierce Company, of 73 Tremont street, Boston, Massachusetts, the largest wholesale grocers, wine dealers and importers in New England.

Q2. Would you say that S. S. Pierce Company is to Boston and New England what Park & Tilford and Acker, Merrall & Condit are to New York?

A. Yes. I am a director in Park & Tilford.

Q3. For how many years have you been yourself in this business? 1424

A. 35 years.

Q4. During those years have you or not had occasion to purchase and to sell your customers Chartreuse?

A. I have.

Q5. In considerable quantities?

A. Yes.

Q6. About three or four years ago did you hear about the Monks leaving La Grande Chartreuse and that the French Government had put the property and Chartreuse business there into the hands of a liquidator or receiver? 1425

A. I did.

Q7. And later did you learn who had become the agents for the Liquidator in this country, and who was it?

A. I heard that it was the Cusenier Company of New York.

Q8. Was that fact brought to your attention by means of this circular of October 25th, 1904, Complainant's Exhibit Aubry-Cusenier Letter?

A. In all probability, yes.

1426 Q9. Did you buy any of the Government Chartreuse from Mr. Aubry or his company?

A. Yes.

Q10. Can you give us some approximate idea of the quantity you purchased at that time?

A. Possibly a hundred cases.

Q11. And did you sell that Government Chartreuse to your customers?

A. More or less of it.

Q12. Will you please explain what you meant by more or less of it?

A. Before it was all sold, we understood that an injunction had issued.

1427 Q13. Did you have any complaints from your customers that the Government Chartreuse was not satisfactory?

A. I never heard of any.

Q14. I call your attention to the old Chartreuse trademarks and I ask you what those trademarks have come to designate to you; that is, do they designate the place of manufacture or the manufacturers ?

A. They have always indicated to my mind the place of manufacture.

Q15. What, if anything, have you heard in times
1428 past as to claims made for the Monks that Chartreuse can be made nowhere else than at La Grande Chartreuse?

A. I had always understood that to be the claim, and have supposed it to be a fact.

Q16. According to your understanding, on what grounds was that claim made?

A. On the grounds that certain products of the soil gave certain flavors.

Q17. Do you refer to the plants used to flavor Chartreuse or the products of the plants?

A. I do.

Q18. Then you mean, do you, that only the plants

grown in that region, according to report, would give the necessary flavor, is that the idea? 1429

By Mr. Scott:

Objected to as leading.

A. That has been my understanding.

Q19. Have you yourself personally tasted the Government Chartreuse sold to you by Cusenier Company, and if yes, did you find it to have the true Chartreuse flavor or not?

A. My answer to the first question is yes; to the second question, practically but not exactly the same flavor. 1430

Q. Would you say that the slight difference which you found between the Chartreuse which had previously been made at La Grande Chartreuse and that sold you by Cusenier Company might be due to the relative ages of the liqueurs?

A. Very probably.

Direct-examination closed.

Cross-examination by Mr. Scott:

XQ21. Before purchasing these hundred or so cases of liqueur from the Cusenier Company, did your company deal in Chartreuse? 1431

A. It did.

XQ22. Who do you understand are the agents in the United States for the liqueur manufactured by the Monks?

A. As a matter of fact, I don't know.

XQ23. Is your company a customer of Messrs. Batjer & Company of 45 Broadway, New York City?

A. We have been in a small way.

1432 XQ24. Did you ever buy Chartreuse from them, and if so, when?

A. We undoubtedly did for a number of years previous to the time that the Monks left France.

XQ25. Is it your recollection that all the Chartreuse made by the Monks which was sold by your company was bought from Messrs. Batjer & Company?

A. No.

XQ26. Where did you get the rest of it?

A. From various sources, London, for instance.

XQ27. When did you receive your last shipment from London of Chartreuse made by the Monks?

1433 A. Within two years; possibly within one year.

XQ28. Did this liqueur imported by you from London bear the old Chartreuse trademark?

A. It did, to the best of my knowledge and belief.

XQ29. With what liqueur are you now supplying your customers when they ask for Chartreuse?

A. Partly with that which came from London and partly out of a stock which we discovered here in Boston in the hands of a dealer.

XQ30. Is the liequeur that you discovered here in Boston the same as that you imported from London; that is, was it made by the Monks, and does it bear the old Chartreuse label?

1434 A. Yes, to the best of my knowledge and belief. Dealing as we do in some four thousand articles, I cannot pretend to know all the details of that business.

XQ31. After your company received the hundred or so cases of liqueur from the Cusenier Company—when customers came into your place and asked for Chartreuse, did you supply them with this liqueur received from the Cusenier Company?

A. We did.

XQ32. Do you read and speak French?

A. To a limited extent only.

XQ33. I will ask you to literally translate the wording of this old Charteruse lable. 1485

A. Well, the head-line is Grande Chartreuse; "Liqueur made at the Grande Chartreuse"; that is the way I should translate it.

Cross-examination closed.

Signature waived.

Adjourned.

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1438 CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN

v.

CUSENIER COMPANY.

In Equity 8949 (Chartreuse)

1439

Testimony for final hearing taken on behalf of defendant before Joseph H. Klein, Esq., Special Examiner by Consent, at the office of Howson & Howson, 32 South Broad Street, Philadelphia, under the revised statutes and Equity Rules.

Monday, July 8, 1907, 2 p. m.

Met pursuant to agreement.

Present: R. L. SCOTT, Esq., representing Philip Mauro, Esq., for Complainants.

1440 CHARLES H. HOWSON, Esq., for Defendant.

It is agreed that the following testimony on behalf of defendant may be taken before the above-named Joseph H. Klein with the same force and effect as if he had been appointed special examiner by order of Court, and either party may enter an order to that effect *nunc pro tunc* as of this date without notice.

ROBERT S. MEDARY, a witness called on be-

half of defendant, having been duly sworn, deposes and says as follows, in answer to questions put by Mr. Howson;— 1441

Q1. What is your name, age, residence and occupation?

A. Robert S. Medary, age 33, 2234 N. Camac street Philadelphia, manager of Robert Steel.

Q2. What is the business of Robert Steel and how long have you been connected with it?

A. Wholesale liquor dealers; 20 years.

Q3. What can you say as to the standing of the house of Robert Steel among other similar houses in the city of Philadelphia? 1442

A. It is one of the largest in Philadelphia—one of the most prominent.

Q4. State whether or not the house of Robert Steel has during the twenty years of your connection with it handled the liqueur known as Chartreuse?

A. It has.

Q5. I hand you a picture of a label and ask you if you are familiar with that label and if so what label it is?

A. That is the label of Chartreuse made by the French Government. The original label. Made in France. 1443

Q6. What is your understanding as to the manner in which this liqueur gets its name, that is to say, why is it called Chartreuse?

A. The way I understand, it was always called Chartreuse was because it was made in France. The brand Chartreuse.

Q7. Is it your understanding that the place of manufacture has anything to do with the quality of the liqueur?

Objected to as leading.

1444 A. It has.

Q8. Why is this according to your understanding?

A. Because the plants that grow there.

Q9. Are you familiar with the fact that three or four years ago the Monks who were originally at the Monastery of the Grand Chartreuse left there and started to manufacture a liqueur elsewhere?

A. I am.

Q10. I show you the picture of another label and ask you if you are familiar with that label, and if so, what it designates to the trade.

A. It designates the liqueur made by the Monks in Spain. I am not sure that that little white label
1445 is on the bottom of the labels we had.

(The label referred to in the last answer is "Defendant's Exhibit Complainant's Label.")

Q11. Have you handled any of the Government Chartreuse?

A. We have.

Q12. State whether or not you have ever received from your customers purchasing the Government Chartreuse any complaint that it differed from the
1446 old Chartreuse made before the Government took hold of the Monastery?

A. They have not.

Q13. Have you handled any of the Peres Chartreux Liqueur made by the Monks in Spain?

A. We have.

Q14. State whether or not any complaints have been received by you as to that liqueur being different from genuine Chartreuse?

A. There have.

Q15. Are you interested in any way on either side of the present controversy or in any way connected

with either Batjer & Co. or the Cusenier Company? 1447
A. No.

Direct-examination closed.

Cross-examination by Mr. Scott:

XQ16. I hand you the label shown to you and enquired of in Q5, which you characterize as being the "Original" label. What do you mean by original label?

A. I mean this is the label used for the last forty years or more. Twenty years to my knowledge.

XQ17. Used by whom? 1448

A. By ourselves. This was used by the Grande Chartreuse in Paris as we understand it.

XQ18. Do you mean that the Grande Chartreuse was in Paris?

A. No, I mean it is in France.

XQ19. You are positive are you that this is an exact cut of the label used on the liqueur put up during the last forty or so years at the Grande Chartreuse in France?

A. I am.

Counsel for complainants notes on the record that the label just identified by the witness is not the label used or ever used on Chartreuse put up by the Monks, but is the label put on the liqueur made under direction of the Liquidator. The Examiner is requested to mark this label for identification. 1449

By Counsel for Defendant:

The foregoing interpolation upon the record by complainant's counsel is objected to as obviously out of place, the label speaking for itself.

1450 XQ20. In your answer to Q9, you state that you are familiar with the fact that three or four years ago the Monks left France. Do you know why they left France, and if so please state the reason?

A. I believe they were driven from France by the Government.

XQ21. What do you mean by "Government Chartreuse?"

A. I mean the one made in the Grand Chartreuse —Government Chartreuse. The one made at the Grand Chartreuse.

XQ22. Made by whom?

A. I don't know exactly by whom but by the
1451 French Government I presume.

XQ23. Did your house ever buy any of this Government Chartreuse?

A. We did.

XQ24. How much and when?

A. I can't exactly tell you when, but we have about fifteen or twenty cases on hand. We bought it twenty-five cases at a time.

XQ25. Haven't you any idea how many cases you bought and when you bought it?

A. No.

XQ26. About when do you think you received the
1452 last lot?

A. It has been quite some time, but I don't know exactly when.

XQ27. Are you now selling from the fifteen or twenty cases which you have on hand?

A. We are.

XQ28. And when a customer comes into your place and asks for Chartreuse, you sell to him the liqueur bought from the Cusenier Company, do you?

A. We never bought any from the Cusenier Company. That is the kind we sell, the kind they have.

XQ29. Who did you buy this so-called Government Chartreuse from?

A. Thomas Massy & Co., of Philadelphia. 1453

XQ30. When a customer comes into your place and asks for Chartreuse do you sell him a bottle of the liqueur bought from Thomas Massy & Co.?

A. We do.

XQ32. How long have you been buying the liqeuer known as Chartreuse from Thomas Massy & Company?

A. For ten or fifteen years. That is as far as my knowledge goes. It may be twenty or twenty-five.

XQ33. Who do you understand made the Chartreuse you bought from Thomas Massy & Company, say six years ago?

A. I don't exactly know who made it, but I know 1454
it came from the Grand Chartreuse in France.

XQ34. The label on the Chartreuse sold by your house during the last twenty years has been the same as this label, has it not?

A. I can't say exactly the same as that, for some are green, some are yellow and are different sizes. This is the same as the yellow one. There are green ones, long ones and short ones. We have all kinds. They all have this L. Garnier on them.

XQ35. What do you understand as the original and genuine Chartreuse?

A. That little label that I just had a hold of. 1455
(Referring to the label marked for identification.)

XQ36. You mean, do you not, that liqueur contained in bottles bearing this label is the genuine and original Chartreuse?

A. I do.

XQ37. I will ask you once more to give me as near as you possibly can the date of your last purchase of Government Chartreuse from Thomas Massy & Company?

A. I can't give you anywhere near. I can't give you any date or anywhere near. It has been over a

1462 you referred in your last answer is the word Chartreuse, is it not?

A. It is.

Deposition closed.

ROBERT S. MEDARY.

Sworn to and subscribed before me this 8th day of July, 1907.

Jos. H. Klein,
(Seal) Notary Public, and Special Examiner by Consent.
Commission expires January 3, 1909.

1463

Counsel for defendant offers in evidence the representation of label referred to in Question and Answer 5 of the deposition of Robert S. Medary, the same being that which was requested by counsel for complainant after XQ19 of said deposition, to be marked for identification, and the notary is requested to mark the same "Defendant's Exhibit Label Identified by witness Robert S. Medary."

1464

Defendant's Exhibit No. 12. 1465
Judgment of July 19, 1905.

(Translation.)

Extract from the Minutes of the Clerk of the Court of Appeal of Grenoble.

The Court of Appeal of Grenoble at the First Chamber thereof, rendered at a public audience held upon Wednesday, July 19th, 1905, the following judgment:

Between:

Mr. Celestin Marius Rey, a priest, the ex-procureur of the dissolved congregation of the Chartreux, domiciled at Fourvoirie, in the Commune of Saint Laurent du Pont, actually residing at Barcelona, 21 Calle Fontradone (Spain), appealing from the judgment rendered by the Civil Court of Grenoble the 23rd day of April, 1904, entered the 22nd day of July following: 1466

Of the one part.

And Mr. Henri Decouturier, a judicial administrator of the Civil Court of the Seine, domiciled at Paris, 28 Rue du Mont Thabor, acting in his capacity as judicial liquidator and receiver with power of administration of the dissolved congregation of the Chartreux, appointed as such by judgment of the Civil Tribunal of Grenoble, the 31st day of March, 1903, respondent. 1467

Of the other part.

Me Clement, the solicitor of Mr. Rey, having presented his case Me Morin, counsel, pleaded, asking that it might please the Court:

To reform the judgment rendered by the Civil Court of Grenoble the 23rd day of April 1904, and by its judgment held that the Abbe Rey, having become the owner by deed of the 20th of November, 1897, of the business at Fourvoirie, is not presumed to be a person substituted for the Congregation of

1468 the Chartreux; that article 17 of the law of the 1st of July, 1901, has no retroactive effect in so far as the same concerns deeds for a consideration (titre onereux) executed prior to the said 1st of July, 1901;

To hold that full faith and credit must be given to the authentic title passed by the deed of the 20th of November, 1897;

To overrule in consequence all the demands and conclusions of Mr. Lecouturier, and condemn him to pay the costs of the action;

Express reservation however made as to all the rights of the said Abbe Rey upon the assets of the
1469 liquidation.

Mr. Rabatel, the attorney for Mr. Lecouturier, presenting the latter's case, Mr. Millerand, counsel of the Paris Bar, pleaded that it might please the court:

To hold and to judge that article 17, paragraphs 1, 2 and 3 have a retroactive effect;

To hold and to judge in consequence that the deeds of the 9th of December, 1871, and of the 20th of November, 1897, are void because accomplished by persons substituted to the profit of the Congregation of the Chartreux;

1470 To hold and to judge that the parties to such deeds, and particularly Messrs. Rey and Grezier, are presumed to be persons substituted to the profit of the Congregation of the Chartreux;

To hold and to judge that Mr. Rey has not adduced sufficient proof to the contrary to overthrow such legal presumption.

To hold and to judge that according to the terms of article 17 (of the said law), the only property formerly held by the Congregation which may be separated from the mass of the property in liquidation, and retaken or resold by the members of the dissolved Congregation, in property which may have

belonged to the individual members of the Congregation prior to their joining such Congregation, or property which has come to such individual members since by way of inheritance, donation or legacy; 1471

To hold and to judge that the business with all its accessories, including the trademark, never having belonged to Mr. Rey before he joined the Congregation and not having, on the other hand, come to him by inheritance, gift or legacy, he, the said Rey, does not (in his title) fulfif the conditions imposed by article 18 of the law of the 1st of July, 1901, necessary in order to maintain an action to retake property or to vindicate title to the same;

To hold and to judge, in consequence, that he may not invoke the apparent titles by virtue of which he asserts his right to separate from the mass in liquidation, the property under discussion; 1472

And further to affirm, for the reasons set forth therein, the said judgment of the Court of first Instance;

To condemn the appellant to a fine and to the costs.

THE FACTS.

The Civil Court of Grenoble rendered upon the 23rd day of April, 1904, a judgment, to the "qualites" and "motifs" of which reference is hereby specifically made, as though the same were herein set forth at length, and the "dispositif" of which judgment was as follows: 1473

"For these reasons.

"The Court judging upon the issues and as "a Court of First Resort, after having heard the "solicitors and the Counsel for the parties and Mr. "Reaume, the Procureur (Attorney General) of the "Republic in his conclusions, and after having de-"liberated according to law, without considering in

1474 "extenso all of the arguments and conclusions to "the contrary.

"Denies the request of Gervais Garnier for "leave to intervene:

"Admits the request of Bonai and his son, and "in so far as necessary of Bonal individually for "leave to intervene, but holds the same to be without "merit;

"And judging the issue raised by Mr. Le- "couturier is his above mentioned capacities against "Mr. Rey, the Court strikes out from the case the "confidential correspondence seized at Beauregard, "on the ground that respect is due to the secrecy of
1475 "letters, and on the ground that it is impossible to "make use in a civil action of letters when neither "the sender nor receiver of such letters is party to "the cause;

"Holds that the business of the manufacturing "of the liqueurs, elixirs and other products, carried "on both at the Grande Chartreuse and at La Four- "voirie, under the commercial name of "Liqueur "fabriquée a la Grande Chartreuse, Elixir vegetal de "la Grande Chartreuse, Produits de la Grande Char- "treuse, comprising the clientele and fixtures, the "ownership of the trademarks and commercial "names serving to distinguish such products,
1476 "the models of the bottles, flasks, and boxes and cases serving for the packing of the "latter, the exclusive right to the use in- "dustrially and commercially of the name 'L. "Garnier,' the furniture, the utensils of every kind "used in the manufacture, the stock on hand, the "primary matters, the manufactured products found "within the shops, cellars and warehouses, and gen- "erally all other appurtenances or dependences "whatsoever of the said business—the object of the "deed of sale of the 20th of November, 1897—are in "reality the property of the congregation of the

"Chartreuse, the deed itself being null because run- 1477
"ning to Rey a member of the Congregation whom
"the liquidator has by weighty presumptions de-
"tailed and substantiated established to be a person
"substituted for the Chartreux;

"Holds in consequence the said business with
"all its accessories, therein comprised the trade-
"marks, to be property held by the congregation
"within the terms of article 17, paragraph 3 of the
"law of the 1st of July, 1901, and property to be con-
"sidered a part of the assets of the liquidator;

"Condemns Garnier and Bonai to pay the cost
"occasioned by their respective demands for leave
"to intervene; 1478

"Condemns Rey to the costs incurred by Mr.
"Lecouturier, with the exception of the costs upon
"the motion made relating to the production of the
"correspondence seized at Beauregard which costs
"Mr. Lecouturier will bear at his own charge."

By legal service (exploit) of the 22nd of July, 1904, appearing by Me Clement, solicitor, Mr. Rey appealed from such judgment;

The other parties to the action not having appealed from the said judgment, the same has become final in so far as they are concerned;

Upon such notice of appeal (assignation) Mr. 1479
Lecouturier constituted Mr. Rabetel, his solicitor, and the issue was then contradictorily joined before this Court.

The cause placed upon our calendar under No. 379 was set down for hearing before the first chamber, and after having been regularly followed by the one party and by the others, and after divers adjournments was definitely fixed for argument at the audiences of the 27th and 28th of June.

At the said audiences the conclusions (pleadings and arguments) hereinabove transcribed were ad-

1480 vanced and developed by the solicitors and the counsel of the parties.

The Public Minister (attorney general) was heard at the audience of the 5th of July, and the cause hereafter having been considered, was finally adjourned to the audience of this day that judgment might be pronounced.

In law the appeal has presented for solution the following questions:

What shall be decided as to the "conclusions" of the respective parties?

What shall be decided as to the imposition of any fine (extra allowance) and as to the costs?

1481 As witness these presents, drawn up by the undersigned for Mr. Lecouturier-respondent.

(signed) Rabatel.

The year 1905, the 28th of July.

I, the undersigned huissier (sheriff) Crier of the Court, at the request of M. Rabatel, solicitor, have served a copy of the foregoing upon M. Clement, also a solicitor

At his office, upon him, and he thereupon signified to me his intention to oppose.

Cost: 68 centimes.

(signed) Arnaud.

1482 Order:

I, the undersigned Justice of those who have heard the cause, next in order after the Chief Justice and Mr. Justice Royer, the two latter prevented and the Chief Justice Poilroux not having heard the cause;

Upon the foregoing and upon the opposition signified by M. Clement, and the notice given him at the request of M. Rabatel, to appear today, at this time and place for settlement,

Do note the default of the said M. Clement, he not appearing, although regularly summoned, and,

after hearing M. Rabatel, do maintain the foregoing and order the same settled. 1483

At the Court House, the 2nd day of August, 1905.

(signed) Garnier.

JUDGMENT.

Whereas by a deed executed upon the 20th day day of November, 1897, at the office of M. Sourd, a notary at Saint-Pierre-de-Chartreuse, Gabrial Grezier, known to his religious order as Brother Marcel-Marie, Procureur of the Monastery of the Grande Chartreuse, transferred to Celestin Rey, a priest, living and domiciled at the Grande Chartreuse, the business of manufacturing the liqueurs and elixirs and other products which Grezier theretofore had exploited at the Grande Chartreuse and at Fourvoirie, in the commune of Saint Laurant du Pont, under the commercial name of "Liqueur fabriquée a la Grande-Chartreuse," "Elixir Vegetal de la Grande Chartreuse" * * * or "produits de la Grande Chartreuse." 1484

And whereas by the service of legal documents (exploit) under date of the 30th of May, 1903, Mr. Lecouturier acting in the capacity of a Receiver with powers of administration, and as a judicial liquidator of the property of the Congregation of the Chartreuse, summoned the Abbe Rey before the Civil Court of Grenoble, that it might be adjudged, notably that the deed by which Rey acquired the business aforesaid was null and of no effect because of Rey's character as a person substituted for the congregation of the Chartreuse; and that it might be adjudged that such congregation is the sole proprietor of the business carried on in liqueurs, elixirs and other products which the congregation exploits at the Grande Chartreuse and at Fourvoirie, together with all the accessories 1485

1486 and dependences enumerated in the said legal document so served (l'exploit d'adjournment) and that it might be adjudged in consequence that this business with all its accessories and with all rights which attach thereto be transferred from the said Rey, the apparent owner, to the liquidator, as property held by the congregation within the terms of article 18 of the law of the 1st of July, 1905;

And whereas as judgment of the 23rd of April, 1904, upholding the said demand of the said Lecouturier, has declared that the business in litigation, therewith comprised the accessories and the trademark, is in reality a part of the assets to be
1487 liquidated and inasmuch as Rey has appealed from such judgment asking that the demands, the findings and the conclusions in favor of the said Lecouturier be set aside.

And whereas the said Lecouturier has in the first place raised against the appeal of the said Rey an argument based upon article 18 of the law of the 1st of July, 1901, to the effect that the only property held by a congregation at the date of the promulgation of that law which may be retaken or reclaimed by the ancient congregationalists is such as belonged to them individually prior to
1488 their membership in the congregation, or such as has come to them individually since by inheritance, gift or legacy.

And whereas the respondent further argues that the Abbe Rey has acquired by deed for a consideration, and since his entry into the congregation, the business forming the subject matter of this appeal, and that therefore his (Rey's) position does not meet the conditions which art. 18 of the law of the 1st of July, 1901, imposes as preliminary to any action by a member of a dissolved congregation for the retaking or the vindication of his title; and that it is not possible for the Abbe Rey to in-

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voke the deed of sale of the 20th of November 1897 1489
for the purpose of reclaiming the property which is the subject matter of such deed, and taking the same out from the mass which has fallen into the hands and under the administration of the liquidator.

But, whereas, neither the text nor the spirit of paragraphs 5 and 6 of article 18 justify the pretension of Lecouturier, and whereas neither permit the Court to hold that Rey cannot be heard in support of his right to the business which he says he acquired from Grezier the 20th of November 1897;

For, if as a matter of fact that article only mentions as property, the title to which may be vindicated by the members to the congregation, property and securities which may have belonged to them individually prior to their entry into the congregation, or such as may have come to them individually since by inheritance, gift or legacy, nevertheless, a reading of the clause in context with article 17 suffices to assure one that such enumeration is not limitative, and that the silence guarded by article 18 as to property acquired for a consideration by the members of the congregation during the course of their religious life does not in any respect imply an impossibility upon the part of any member of 1491
such congregation to carry on an action for the restitution or recovery of property so acquired. 1490

Article 17 only creates a presumption, which may be rebutted by proof ot the contrary, that a person has been substituted for the congregation, a presumption which is raised notably against the individual member to whom a sale has been made, and therefore, the argument advanced for the first time before this court by Lecouturier, is irreconciliable with the right expressly given to each member, who has acquired property, to overthrow by proof to the

1492 contrary the legal presumption raised against him; carried to its logical conclusion such argument would tend to nothing less than to a prohibition of all vindication of title to property acquired for a consideration, by any member of the congregation subsequent of his entry.

That there is therefore no doubt but that Rey may be heard to contest, by such proof as it permitted to him by article 17, the presumption raised against him by the same article, that he is merely a person substituted for the congregation, and such right necessarily implies a further right upon his part to vindicate as his personal property the business, with its accessories, which forms the subject matter of the deed of sale of the 20th of November 1897;

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That therefore the first argument raised by Lecouturier by which he seeks to avoid de plano as inadmissable, the pretentions of Rey, cannot be sustained;

But whereas, in addition, Lecouturier has opposed to the appellant article 17, paragraph 1 of the law of the 1st of July 1901, which paragraph declares null every deed "entre vifs" or by testament, whether for a consideration or gratuitous passed either directly or by a person substituted, or by any other indirect means, for the purpose of permitting any congregation, whether legally formed, or de facto, to evade the provisions of articles 2, 6, 9, 11, 13, 14 and 16;

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And whereas by the terms of paragraphs 2 and 3 of the same article, those are legally presumed to be substituted persons, to the profit of religious congregations, but with the reservation of the right to prove the contrary:

1st: Who being members of the congregation are vendees under any sale (from the congregation) etc. * * *

And whereas the action in vindication by Lecouturier of his title to the business, which was sold to Rey by Grezier the 20th of November 1897, brings before the Court the question as to whether article 17 has a retrospective effect, as to deeds for a consideration executed prior to the promulgation of the law; and whether Rey, the apparent purchaser under the said deed of the said business of manufacturing the liquors, etc carried on at the Grande Chartreuse and at Fourvoirie, ought not to be presumed until he prove the contrary, a substituted person for the profit of the congregation of which he is a member; 1495

And whereas the work done in preparation of the said law of the 1st of July 1901 and the debates thereon, no less than the text of the law itself, show a strong disposition upon the part of the legislature, not only to pass upon situations which may arise in the future and to regulate for the future the religious congregations, but as well to apply at once a law to already existing congregations in being upon the 1st of July 1901, which application could not be efficacious except upon the condition that it regulate the facts existing prior to the law's promulgation and reach the congregations in their past by making retroactive the nullity pronounced by article 17, as well as the presumption *juris tantum* by which a member of a congregation, the apparent owner by virtue of a sale or of a gift or of a legacy, other than in the direct line, is supposed to be a person substituted for the benefit of the congregation; 1496 1497

That it was the desire of the legislature to deviate in the interest of the public order, and for the sake of the end which it had in view from the rule laid down in Article Two of the Civil Code, by giving a retroactive effect to the presumption as to the substitution of persons and by an inversion of the

1498 burden of proof, seems to be beyond question; thus the disposition of article 17 relating to the sales and gifts of which dissolved congregations may have been the beneficiaries under cover of the name of some one of their members, reaches indiscriminately, whatever may have been their date, to all deeds either for a consideraton, or gratuitous, passed to the congregations under the conditions the article determines;

That it becomes incumbent, therefore, upon Rey to overthrow, by proof to the contrary, the legal presumption as to the substitution of persons under which he labors, and his inability so to do is
1499 manifest; but even admitting, in conformity with Rey's pretensions, that article 17 is not able to affect deeds for a consideration passed prior to the promulgation of the law, and that therefore Lecouturier, as the plaintiff, is charged with the burden of establishing that Rey on the 20th of November, 1897, acted only for the account of his congregation, it may not be denied that Me Rabatel has fully sustained such burden as resting upon him;

That in this respect the "motifs" of the judges in first instance, which "motifs" this Court adopts; defy all refutation and criticism, the proof which
1500 they furnish leaves no doubt as to the simulation of the deed of the 20th of November, 1897, in so far as it concerns the transfer by Grezier, procureur of the Grande Chartreuse, to Rey, a member of the congregation, as the apparent purchaser of the title to the business which was the subject matter of such sale.

That the varied circumstances brought out by the judgment appealed from, constitute in fact presumptions of the gravest most categorical and substantiating kind as to the substitution of a person alleged by Lecouturier in support of his vindica-

tion of title—they all unite in bringing about a 1501
denial as devoid of all foundation of the pretension of Rey that he is, and was Grezier and Garnier, his predecessors, personally the proprietor of the business in question, upon condition only of dividing the revenue of the profits with the members of the congregation;

Furthermore the very existence of such an unlikely partnership between members of a religious order scattered through divers convents of the Order is inadmissible in this particular case, as has already been decided by the Judges of first instance, since it necessarily implies that each member of the congregation has the right to withdraw his 1502
share of the assets upon his leaving the congregation, whereas articles 11 and 12 of the Statutes of the Chartreuse expressly prohibit any retiring member from claiming, by any title whatsoever, any sum or indemnity;

That it is therefore justly that the judgment disregards as contrary to the statutes of the Order of the Chartreus and in consequence inadmissible, the organization alleged by Rey of a partnership estate, and the exploitation of a de facto partnership between the members of the congregation, when the rules of their Order even forbid them to 1503
benefit in any measure whatsoever in the products or the revenues of a business carried on by any one of them.

Fruthermore, upon the other hand, the Abbe Rey may not effectually oppose to the vindication of title set forth the pleadings of Me Rabatel, as a proof of his private right to such business and to the marks of the Chartreuse, the different judicial decisions rendered during the last half century in France and abroad, which have recognized him (Rey) as well as his predecessors Grezier and Gar-

1504 nier, as personally the owners of such mark and of such commerce;

That the authority of "res judicata" essentially relative does not affect any one except the parties to which the action and the particular issue of each suit, and so the judgment or orders referred to by Rey may not be set up as against Lecouturier;

Furthermore the decisions which have recognized in Rey or his predecessors a personal and direct right to the commerce and the remark of the Chartreuse, in refusing the exception taken that they were merely representativs and figure heads
1505 of the congregation, may be explained and justified by the necessity (under which the Courts laboured) to effectively protect their manufacture and their products against fraud and counterfeiting; but the respective situations of Rey and of Lecouturier are entirely different, and entail the application of different principles, for the present adversary of the Abbe Rey is none other than an attorney of fact or justice, charged with verifying the sincerity of the acts which are opposed to him and with conserving the estate of the dissolved congregation which he is charged with liquidating;

1506 It may be said also that the arguments of M. Clement is no better founded which attempts to sustain that the Administration of the Enregistrement has consecrated Rey's individual right of ownership by collecting more than 200,000 francs of transfer taxes upon his title of purchase, and by abstaining from reclaiming the tax of "accroissment" upon the industrial property of Fourvoirie, the business and the trademark, on the ground that Garnier, Grezier and Rey have each been successively and personally the owners, etc.

The "motifs" of the judges of the Court below to

1338

which this Court refers, justify fully in this respect 1507
the refusal of the argument advanced by Rey as to the attitude and the acts of the Administration of the Enregistrement;

That this collection of taxes, under the circumstances under which it is regulated and carried on, has no judicial effect whatsoever from the point of view of a determination of the rights of ownership, and so the decisions referred to by Rey, have not resolved in any way, nor even prejudiced the question of the ownership of the business which Lecouturier contends makes a part of the estate of the congregation, and such decisions have left aside the 1508
question of determining if the reality corresponded upon this point with appearances, and all question as to the deeds which attribute the ownership to Rey or to his predecessors;

Various presumptions of fact, ascertained by the judges of the lower court tend by their weight and their precision to establish that the Abbe Rey has played, in the deed of the 20th of November 1897 which deed he invokes to justify his title, the role of a person substituted to the profit of the congregation, of which he was a member;

The first, and not the least of these presumptions, is deduced from the personality itself of the 1509
apparent purchaser, who was, in his capacity of Procureur of the Monastery of the Grande Chartreuse, as well as were his predecessors Grezier and Garnier, bound by articles 15 and 16 of the Statutes (of the Order) to administrate its "temporel" (goods) under the direction of the Prior;

The function of Procureur presupposes therefore in itself upon the part of the encumbent an administration of the estate of the congregation, and that it is in his capacity of "Père Procureur," and not as personal owner of the business and the trade-

1510 mark which is an asset thereof, that after having summoned on the 14th of January 1842 Messrs Meunier and Sybille, as counterfeiters, before the Criminal Court of Grenoble, Louis Garnier declared *in his said capacity* that he abandoned the existing suit *between the Chartreuse* and the above named upon the certain conditions contained in the registered deed of the 9th of the July following.

That it was equally as Procureur of the Monastery of the Grande Chartreuse that Louis Garnier, intended to make use of the protection resulting from the law of the 28th of July 1824 when he filed
1511 on the 20th of November 1852 with the clerk of the Commercial Court of Grenoble a trademark, and which mark he subsequently renewed in his name, the 13th and 15th of October 1864 in conformity with the requirements of the law of the 23rd of June 1857 after having in 1855 retired from his functions as procureur;

He continued until the 9th December 1891 to publicly carry on the business of manufacturer of the liqueurs, elixirs and other products of the Grande Chartreuse, and declared at that date, in a deed executed in the office of Me Sourd, a notary, that he abandoned to Mr. Grezier, Procureur of the
1512 monastery, who accepted such transfer, all the rights resulting from the filing of the marks, etiquettes etc. regularly accomplished by him * * * authorizes Grezier to continue the use of his (Garnier's) name.

It should be here remarked that this deed does not contain, nor does it indicate, any affirmation by Garnier of a privative right to the business and the mark which are its subject matter, and that he figures therein not as proprietor of this business and its accessories, but simply as one charged with exercising over these a supervision which his ad-

vanced age no longer permits him to continue to advantage. 1513

There is furthermore no doubt but that all supervision exercised over the manufacturing of the *liqueurs, elixirs and other products known as the Grande Chartreuse,* was so exercised on behalf of the congregation, and it is inconceivable that by the deed of the 9th of December 1871 there should have been delivered to Grezier, for a consideration of 100 francs, the price fixed in the deed for the Enregistrement, the personal right to a business the importance of which was increasing day by day and which was already considerable.

That the fictitious character of such deed planned to permit the congregation of the Chartreux to continue, under cover of Grezier, its Procureur, carrying on the business, managed for so long time by Garnier, as its figure-head, in not therefore seriously to be contested, and it therefore follows that Grezier was not able to transmit to Rey on the 20th of November 1897 private and personal rights which he himself did not acquire from Garnier on the 9th of December 1871. 1514

Whereas the circumstances which have preceded, accompanied or followed the public act of the 20th of November 1897, establish irrefutably that Rey only figured in the said act as figure-head of his congregation, the sole and veritabel proprietor of the business of which he was only the apparent purchaser; 1515

Remark that the sale he (Rey) invokes was made by Grezier to him for the total price, paid in cash before the notary, of four millions four hundred forty-nine thousand, twenty-six francs and 45 centimes, apportioned between the various assets of the business, 1,500,000 francs being applied, to the goodwill and fixtures, the trademark and other accessory rights.

1516 Upon the demand of the Administration of the "Enregistrement" this sum was raised, after examination by experts and negotiations, to the figure of seven millions.

It is certain, to be in with, that Rey had no right over the buildings at Fourvoirie, the headquarters of the business, the exploitation of which he assumed, and that he admitted before Mr. Dournon, the expert, that he only occupied these premises by virtue of a permission granted by the "Pere Prieur" which was revocable any day.

Therefore it is likely that Rey would not have concluded for his personal account such an impor-
1517 tant bargain without having assured himself of the occupancy for a long term of the premises where his industry had been and was to be carried on, and yet he has waited nearly four years before obtaining on the 21st of September 1901, for a period of eighteen years, from the Prior of the Grande Chartreuse, at the annual rental of fifty thousand francs, besides the charges, a lease of the factory and its dependences, the same being with retroactive effect as of the 30th of the June preceding, the day before the law as to the association took effect.

Such circumstances sensibly weaken from the
1518 point of view of its sincerity, the deed of the 20th of November 1897, and the improbability of a personal acquisition by Rey of the business today in litigation is rendered still more undeniable by this further circumstance, remarked upon with reason by the Court of the First Instance, that it was possible for the State to withdraw at any moment from the General Prior the benefit of the concession granted by the order of the 27th of April 1816 and the decree of the 6th of June 1857 and thus to render impossible so far as Rey was concerned, an exploitation, upon the premises of the Grande Chartreuse, as well as at Fourvorie, of the business

which he has acquired for a consideration of four million four hundred forty nine thousand francs; 1519

Finally, as regards this price which Rey cannot effectively advance as argument in order to establish that he has really paid it—the very mention of it in the deed establishes its amount until a proceeding to the contrary to prove it false and by the deed the whole price of the sale was paid to Grezier, in currency and bank notes counted and handed over before the notary and the witness—on the other hand, the correct extract of Rey's current account at the branch of the Credit Lyonnais, at Grenoble, mentions the payment which such institution made to him of a sum of three millions six hundred thousand francs, the same day as the deed is dated the 20th of November 1897; 1520

Without its being necessary to remark that Rey does not furnish any justification to account for the remainder of the price, that is to say: for a sum of about 850,000 francs, it suffices to observe, in order to set aside this pretention, that the state of his fortune was most modest, as appears from the documents produced at the hearing, and it is impossible to admit that whatever may be his morality and his good character that the Credit Lyonnais advanced to a monk without personal resources a sum of 3,600,000 francs, without the guarantee of a deposit of securities or of a pledge of credits or merchandise or of a bond. 1521

It is therefore certain that the advance of such sum, actually counted over in currency and bank notes before the notary was made, not to Rey personally, but to the congregation of which he was a member, and such conclusion is substantiated by a preponderance of evidence as to the conduct of Rey and of the congregation, after the closing of the monastery of the Grande Chartreuse.

Rey had in fact ceased all manufacture at Four-

1522 voirie after the dispersion of the Order, whereas the Ordinance de Refere (order in liquidation proceedings) of the fourth of April, 1903, provided for the continued working of the factory by limiting the powers of the liquidator, and Rey abandoned the exploitations of the business for which he had paid 4,500,000 francs thus implicitly admitting himself to be a stranger to such business.

That the coincidence of the cessation of all exploitation of the business at the same time as the dispersion of the Chartreux proves that such exploitation was only carried on for their account, and the demonstration which results therefrom is
1523 so much the more irrefutable in that the congregation has recommenced at Tarragona in Spain the manufacture which circumstances obliged them to abandon at Saint Laurent du Pont;

That there was entered into on the 6th day of February 1904 between the General Superior of the Chartreuse and the Spanish corporation *"La Union Agricola"* an agreement giving a concession to such Company for a period of 12 years of the monopoly of the manufacture, in its factory at Tarragona, of the liqueurs, elixirs and products of the Grande Chartreuse, it clearly results therefore that
1524 the congregation disposed of as its property, the business apparently acquired by Rey the 20th of November 1897;

A not less irrefutable proof of the exclusive rights of the congregation to this business furthermore, from the terms and objects of its demand addressed to the *Circuit Court of the United States, Southern District of New York*, for the vindication of its right to the ownership and use of the mark, bearing the name Chartreuse, registered in 1896 with the *Patent Office of the United States*. The various circumstances revealed since the judgment form which this appeal has been taken concur with

those in such judgment passed upon to demonstrate beyond a reasonable doubt that Rey did not contract, in the deed of the 20th of November, 1897, except for the account of and as the figure head of the congregation, of which he is member; 1525

It was therefore with reason that the Civil Court of Grenoble, granting the request of Lecouturier, annulled such deed as fictitious and simulated, and declared that the business, apparently acquired by Rey, with all its accessories and notably the trademark, constituted in reality property held by the congregation of the Chartreuse at the date of the promulgation of the law of the 1st of July 1901 and subject therefore to the liquidation ordered by the Judgment of the 31st of March 1903; 1526

WHEREFORE, for these reasons and for such of those as were given by the judges below as are not contrary thereto

THE COURT,

After hearing Counsel and the solicitors of the parties, as well as the Attorney General Fontanille in his conclusions and after having carefully deliberated;

Without deciding as to the objection raised by Lecouturier that Rey does not fulfil the conditions which article 18 of the law of the 1st of July 1901 imposes upon members of a dissolved congregation who seek to recover individual property overrule the same as unjustified, and strike out such plea of M. Rabatel: 1527

Order, in consequence that Rey has the right to invoke the deed by virtue of which he claims to have acquired for a consideration the business claimed by Lecouturier;

Upon the merits, dismiss Rey's appeal, and overrule his conclusions, and affirm the judgment of the Civil Court of Grenoble of the 23rd of April

1528 1904 the same to be executed according to its form and purport;

Condemn Rey to an extra allowance (fine) and to the costs, of which costs a part shall be paid to M. Rabatel, solicitor, since he states that he has advanced the same.

Thus judged and pronounced at a public audience of the Court of Appeal of Grenoble in the first civil chamber on Wednesday the 19th of July 1905, Present, M. M. Pailhe, presiding justice, Royer, Garnier, Duhamel and Berjot, Justices.

In the presence of Mr. Fontainille, Attorney Gen-
1529 eral, Assisted by Mr. Testout, Clerk of the Audience.

Minutes signed by:

Pailhe, Presiding Justice, and Testout, Clerk of the Audience.

This judgment bears the following endorsement:

"Registered at Grenoble the 26th day of July 1905, folio 96, case two."

Received 31 francs 25 centimes, decimes comprised.

(signed) Begon,
Receiver.

1530 In witness whereof the minute of the present judgment has been signed by the Presiding Justice and by the Clerk of the audience.

A true copy delivered to M. Rabatel, solicitor, at his request, by the Chief Clerk, who affixed the seal of the Court.

The Chief Clerk.

Defendant's Exhibit No. 14. 1531

Extracts from Jurisprudence.

TRANSLATION.

French decisions have held time after time that wines are not designated by the name of the place where the wine-merchant has his warehouses and factory, but by the name of the place where the grapes are grown. (Paris, 24th of August 1854, Chretien, quoted by Blanc, 776; Court of Cassation, 8th June 1857, Rieunegre, J. Pal., 47-2-100).

Quite recently, the Court of Angers was called upon to pass upon the same question, in connection with champagne. (Angers 15th of December 1891, and Court of Cassation 9th of April 1894, Ackermann-Laurence, Ann. 96, 100). 1532

Pouillet, after giving an account of these decisions, adds:

"It has been held by analogy that when the mak-
"ing of a liqueur consists not only in its distilla-
"tion but in all its primary manipulations, the place
"of manufacture should be considered as being not
"only the place where the liqueur is prepared, but
"also the place where the plants with which it is 1533
"made are grown. (Grenoble, 8th of Feb. 1886,
"Grézier, Ann. 87, 151)."

It has likewise been held:

"That the name of Madeira given to the wines
"produced in such island is a local denomination
"and is the exclusive property of the winegrowers
"of the island of Madeira (Rouen, June 26th 1900,
"Blandy, Ann. 00, 212)," and the Court of Douai condemned Molinard Brothers, because they wanted to pass off brandy made by them in Pas-de-Calsis as "cognac," that is to say a liqueur made

1584 and produced in the region where such name is applied. (Eouai, March 18th 1900, Martell, Ann. 00, 177).

Defendant's Exhibit 15.

(Dournon Report.)

TRANSLATION.

Extract of the Minutes of the Clerk of the Civil Tribunal of the First Instance of the District of
1585 Grenoble (Isère).

FILING OF THE EXPERT'S REPORT.

On the fifteenth day of February 1899, at the office of the Clerk of the Civil Tribunal of Grenoble, Mr. Dournon, an architect of Grenoble, filed a report dated the fifteenth February, 1899, drawn up by him as an expert appointed by the "Administration de l'Enregistrement" in order that he might give his opinion regarding the disagreement between such Department and Mr. Rey, known in religion as Dom Valery, Proc. of the Grande Chartreuse, domiciled at the Convent of Grande Char-
1586 treuse;

This report was registered at Grenoble on this day, by Mr. Helly, 'Receveur'. As witness these presents,

Signed: David, Clerk.

Registered at Grenoble this eighteenth day of February 1899, folio 10, case 9—Received five francs and 63 centimes.

Signed: Bonnet, 'Receveur.

Civil Tribunal of First Instance of Grenoble.'

For the Councillor of State, 'Directeur Général de l'Enregistrement, des Domaines et du Timbre.'

Against Mr. Célestin Marius Rey, a priest at the Convent of Grande Chartreuse. 1587

Report of the Experts.

To the President and Judges of the Tribunal of First Instance of Grenoble:

I. FACTS.

According to a deed signed before Mr. Sourd, a notary of Saint Pierre de Chartreuse, on the twentieth day of November 1897, registered at Saint Laurent du Pont on the twenty-third day of November, Mr. Célestin Marius Rey, known in religion as Dom Valery, acquired of Mr. Gabriel Alfred Grézier, in religion Dom Marcel, the business of liqueurs, elixirs and other products which Mr. Grézier carried on at the Convent of Grande Chartreuse and at Fourvoirie, in the parish of Saint Laurent du Pont, under the following commercial names: 'Liqueur fabriquée à la Grande Chartreuse,' 'Elixir Végétal de la Grande Chartreuse'; 'Produits de la Grande Chartreuse'. 1588

Said business consisted principally of:

1. The clientelage and connexion;

2. The ownership of the trademarks and commercial names which serve to designate said products, models of the bottles, flasks, cases, etc. 1589

3. The exclusive right to the industrial and commercial use of the name "L. Garnier."

4. The rights rising out of all transfers or authorizations granted by Mr. Garnier to Mr. Grézier.

5. The right to call himself the only successor to Mr. Grézier and therefore to Mr. Garnier.

6. The industrial property rights attached to the business under all its forms as the same are owned by the vendor, and as he publicly enjoys the same.

1540 7. The furniture and utensils used in connection with the carrying on of the business.

8. The goods, primary ingredients, manufactured products and accessory merchandise of any kind to be found in the warehouses and cellars of the Convent of Grande Chartreuse and of Fourvoirie.

It is stated in the deed that the transfer is granted in consideration of the price to be paid cash down as follows:

1. Two million eight hundred and fifty two thousand and one hundred and sixty seven francs 45 centimes, for the goods and primary ingredients set forth in a special statement thereto annexed.

1541 2. Ninety six thousand eight hundred and fifty nine francs for the furniture and stock of materials also set forth in detail in the above mentioned statement.

3. One million five hundred thousand francs for the clientelage, connexion, marks and all other accessory rights.

As far as the charges and conditions are concerned, they do not differ from those which are customary in deeds of the same kind, that is to say the assignee shall immediately have the enjoyment and use of the rights so assigned, with the consequences arising out of the some.

1542 The price of Fr. 1,500,000 for the clientelage and trademarks did not appear sufficient to the 'Administration de l'Enregistrement' and in a petition presented to the First Chamber of the Tribunal of First Instance of Grenoble, the Director for the Department of Isère of said 'Administration' asked for an official report as to the value of the clientelage in question, on the twentieth day of November 1897, that is to say on the day of the sale.

Said petition also contained a statement made in his capacity as expert of the 'Administration' by Mr. Adolphe Dournon, architect and expert of

No. 2 Rue de Bonne, Grenoble, who shall proceed 1543
in conjunction with the expert whom Mr. Célestin Marius Rey shall have to appoint within three days, after having been sworn by the Justice of the Peace of the Canton of Saint Laurent du Pont.

Such petition was notified to Mr. Rey through Mr. Parendel, a process server of Saint Laurent du Pont, on the eighteenth day of February 1898, and Mr. Rey informed them, by a letter dated the thirtieth of August, duly registered, that he had chosen for his expert Mr. A. Armand, a cornfactor, and former President of the Commercial Court of Grenoble, Knight of the Legion of Honor, residing at 1544
Grenoble, Avenue Alsace Lorraine, No. 2.

An Order rendered by the Justice of the Peace of Saint Laurent du Pont on the tenth of September 1898, appointed Thursday, the twenty-second of September, nine o'clock a. m., at the Justice of the Peace, for swearing the experts.

The petition praying for an official report by experts, that of the Justice of the Peace and the Order were then served on the two experts by Mr. Armand, a process server of Grenoble, on the fifteenth day of September 1898 together with a summons to appear on said date at the Justice of the Peace of St. Laurent du Pont. The same Order was 1545
likewise served on Mr. Rey by Mr. Parendel, process server, on the same date, 15th of September 1898, together with a summons to be present when the experts were sworn, although the same would take place whether he was present or not

On said date, 22nd of September 1898, at the appointed hour, the two experts were sworn in the presence of Mr. Joly, 'Sous-Inspecteur de l'Enregistrement' representing his Department, and in the absence of Mr. Rey. The beginning of the examination of the premises at Fourvoirie was immedi-

1546 ately fixed for that same day, at half past eleven a. m. and it was decided that the same would be adjourned, if, contrary to expectation, Mr. Rey was not present and if he objected to that day being chosen.

Such decision and the record setting forth that the experts had been sworn were immediately served on Mr. Rey by Mr. Parendel, process server, and at the appointed hour, the experts, accompanied by Mr. Joly 'Sous-Inspecteur' went to the principal office of the distillery, at Fourvoirie; they were received by Mr. Rey who made no objection to the premises and methods of manufacture being immediately examined.

1547

It is to be noted, however, that on that day the experts only visited the factory at Fourvoirie.

They successively examined the vast premises in which the plants are distilled, the sirups prepared, the bottles washed, the liqueurs put into bottles and packed, and the cellars used as a warehouse for the storage of alcohols, chartreuse, casks, boilers, etc.

As regards the manipulation of the plants and the apportioning of the ingredients etc. we were told that this part of the work was carried on at the Convent of Grande Chartreuse.

1548 A first remark must be made, when examining the premises, as regards the transportation facilities enjoyed by the factory, which is connected by a branch line belonging to it to the railway line established by the 'Compagnie des Tramways de Voiron à St. Béron" and with a special station for goods.

One of the experts having raised the question whether their mission consisted merely in the examination of the value of the mark and of the clientelage, or whether on the contrary they were to examine the stock of material sold for Fr. 96,-

859, Father Rey declartd that as far as he was con- 1549
cerned he would adhere to the terms of the petition which was served on him, and that he would merely remark, for explanation, that in the price agreed upon between the vendor and himself, they had largely taken into account the exceptional depreciation which would ensue, as regards the stock of material included in the sale, in case the same was transferred elsewhere, whether in France or abroad, by reason of the withdrawal of the concession which had been granted to the Pères Chartreux. Mr. Joly 'Sous Inspector,' declared that while he made explicit reservations in the name of his Department in case the latter thought fit to adopt a different 1550
interpretation, he admitted that the examination was strictly limited by the petition, to the mark, the clientelage and its accessories set down in the deed as worth Fr. 1.500.000; it was agreed that the mission of the experts would continue on such basis and that they would not deal with the valuation of the material

We shall simply remark here, therefore, that the factory admirably fills the object for which it was built; as we said before, it has a special railway line and possesses a large covered space where the trucks are loaded and unloaded by fixed cranes; the 1551
buildings where the different parts of the manufacture are carried on and the cellars are also satisfactory and in perfect order of repair.

At the end of our examination, we left the factory and fixed a subsequent date for the interviews which the experts were to have together, in order to examine the papers and to discuss the questions relating to the receipts and expenditures of the factory, to the gifts and alms given out by Father Rey in his capacity as Procuror of the Convent of Grande Chartreuse, liqueur manufacturer, and to

1552 the information which was to be furnished by Father Rey.

A first interview was had by the experts at the house of the undersigned, 2 Rue Bonne, on the third of October.

On the fourteenth of October a second interview, devoted more particularly to the examination in detail of: I. the gifts and alms above referred to, set forth in the documents produced by Father Rey; 2. the following answers to the questions which were asked at the time of the examination of the premises .

1. How are the manufactured products paid for?

1553 A. "I sell for ready money, unless I have a special agreement with an agent; my agents, however, pay at the beginning of the month goods bought by them during the preceding month."

2. How many workmen or lay employees and monks have you in your employment, and what are their salaries?

A. "64 lay workmen at Fourvoirie and at Voiron, who receive an average salary of 100 francs a month.

Sixteen lay employees who are paid an average salary of two hundred francs a month.

1554 One manager, twenty-five thousand francs a year.

Three brothers, who know the formula and manage the factory, forty thousand francs each.

Three brothers, overseers, at the head of the workmen, ten thousand francs each.

(If I were looked upon as a member of a business corporation, I should ask no less than sixty thousand a year as manager)."

3. To whom does the warehouse at Voiron belong? Is there a lease in Father Rey's name?

A. " The warehouse at Voiron belongs to Madame Millet, nee de Vatrée, a widow. It is leased

to Mr. Brézum at a yearly rental of five thousand four hundred and fifty francs." 1555

4. Is there a lease in Father Rey's name for Fourvoirie or for those buildings belonging to the Convent where the mixtures and elixir are made?

A. "No. The buildings of Fourvoirie and the Convent belong to the State, the furniture and fittings in the distillery belong to me, as appears from the deed of sale of the 26th of November, 1897."

It is necessary to state here that Father Rey declared at the time of the examination of the premises, that he was merely tolerated by the Prior and that such tolerance can cease any day, without any motive except his wish that it should so cease, and that such situation is inconsistent with the idea of a lease. 1556

5. Is St. Bruno's Hospital at Saint Laurent du Pont private property? How much does it cost to maintain such hospital and how much of the expenses are borne by the Department or the parish?

A. "St. Bruno's Hospital belongs to Mr. Dominique L'Hôte (a Chartreux monk); there is no lease and none of its expenses are borne by the Department or the parish.

The yearly expenditure (which is entirely borne by the Liqueur Manufactory) is the following, according to Father Rey: 1557

28530 days (Fr 2.06 per patient per day)	38.771,80
4.460 days (Fr. 1,15 a day for night shelter)	5,129.
Doctor's salary and lodging	7.000.
Assistant doctor's salary.....	5.000.
Salary of the chaplain.....	2.000.
Salary of twelve sisters	3,000.
Keeping in repair the buildings and furniture	8.000.
Reimbursement of the capital expended, (Fr 1.250.000)	

1558 6. What is the expenditure of the Currière Institution?

A. "The Currière Institution for deaf and dumb children, carried on by ten Brothers, educates sixty-three children and is paid for entirely by the Grande Chartreuse, the total expenditure for food, board and lodging, buildings and furniture being ..... Fr 70.000.

7. Is there any real estate in the neighbourhood of the Convent belonging to the Chartreux Monks? Can such real estate be considered as a part of the Domain of Grande Chartreuse?

1559 A. "In addition to the concession of the State, a few pastures were purchased in the name of the monks for Fr. 30.000; such pastures are not included in the domain known as Grande Chartreuse."

8. What was the cost of keeping up Fourvoirie?

A. "The cost of keeping up Fourvoirie varies somewhat; on an average it amounts to fifteen thousand francs."

9. Does Mr. Dubonnet and the other agents for the products of the Grande Chartreuse advertise at the expense of the Factory?

A. "Mr. Dubonnet and my other agents do not
1560 advertise much, the annual figure varies between twenty and thirty thousand francs."

10. What are the private expenses, as regards private and public charity, incurred by Father Grézier, on an average, and by which tradition Father Rey feels bound to continue?

A. "In 1897, the net profits were applied in the following way:

1. Endowment and maintenance of all the Chartreuses, that is 24 convents ..... Fr. 1.500.000

(This item has always been recognized by the "Enregistrement.") 1561

2. Dumb and Deaf Establishment of Curriàre (item recognized by the 'Enregistrement') 70.000
3. Hospital of Saint Laurent du Pont.. 88.890.
4. Hospital of Entre deux Guiers (Subvention) 13.000
5. Hospital of Voiron (seven beds and three old men) 7.000
6. Relief fund for establishments of education under the control of the State; the big Seminary and small seminaries (The big Seminary belongs to the State) 130.000 1562
7. Fires, inundations and other calamities 60.000
8. Buildings, repairs, keeping buildings belonging to the State and to the parishes in repair: churches, parsonages, roads, foundations, etc... 500.000
9. Alms more particularly connected with religion 470.910

Total..... Fr. 2.839.800.

1563

11. What do your sales amount to for 1897 and what was your net profit?

A."In round figures and as nearly as possible, the receipts and expenditures were as follows for 1897, which differed very little from the ten preceding years:

Total receipts.....Fr. 7.160.000

1564 Expenditure.

1. Purchase of alcohol	1.530.000
2. Exploitation expenses (remittances to agents)	1.440.000
3. Sugar	370.000
4. Bottles, flasks	297.000
5. Corks, labels	52.000
6. Aromas, drugs	90.000
7. Taxes, rates	90,000
8. Transportation	25.000
9. Taxes, insurance	6.700
10. Keeping the plant in repair	18.000
1565 11. Coal	6.500
12. Staff at Fourvoirie	180.000
13. Imitations, lawsuits, adververtisements	210.000
14. Warehouses, leasing of same, & insurance	21.000
15. Carriage from Fourvoirie to warehouses	21.500
16. Presents on New Year's Day	14.000
17. Workmen's pensions	4.500
18. Small expenses	10.000

1566 Total expenditure...Frs. 4.320.200.–4.320.200.

Balance.....2.839.800

In order to supplement this statement, it is necessary to point out here that on the 18th of October 1898, which date was agreed upon between the experts and Father Rey, the former went to the Convent of Grande Chartreuse in order to ascertain the existence and the importance of the buildings in which are prepared the products distilled at Fourvoirie and the elixirs.

Father Rey pointed out in the course of such examination, and it was admitted by the experts, that the letting value of that part of the convent used for such manipulations was of no very great importance; for it consists of a room for the sorting of the plants, containing fifty-three pigeon holes; a smaller room for distilling the elixir; a large room for putting the liqueur in bottles and packing the same, and a crane for loading and unloading casks and bottle chests. The material in use in such rooms is the same as that set forth in the statement of the furniture and fittings annexed to the deed, and their relative importance, from the point of view of our mission, can be judged therefrom. 1567 1568

Other interviews took place, on the thirty-first of October, fifteenth of November, sixteenth of November, sixth of December 1898, on the eleventh, sixteenth, twenty-fourth and twenty-fifth of January, either between the experts or with Mr. Joly 'Sous-Inspecteur'.

Finally, on the thirtieth of January 1899 a final interview between the experts and Mr. Joly, "Sous-Inspecteur" took place.

At each of these interiews, the experts exchanged views and made known the reason on which they based their opinion, but as they were unable to come to an understanding as to the valuations or as to the appointment of a third expert for the purpose of casting the final vote, they decided to each draw up a separate report. 1569

The undersigned therefore informed the other expert, Father Rey and the 'Administration de l'Enregistrement' represented by Mr. Joly, 'Sous-Inspecteur', residing at Grenoble, 2 Rue Lakanal, that he would begin on the 30th of January 1899, at his office No. 2 Rue de Bonne, drawing up his report and would finish it on the fifteenth of February, and that between those two dates, he was at

1570 their disposal to give them the explanations which seemed necessary to them and to hear their observations.

II. Discussion.

This statement of facts and the information contained therein seem to furnish all the elements of the valuation we are to make.

In order to make the most of such information, we have thought it advisable to adopt the following sequence

1571 A. Examination and criticism of the information furnished by the assignee to establish the average receipts which correspond with the different products the trademark of which has been assigned to him.

B. Examination and criticism of the expenses which ought to be deducted from the receipts obtained as above.

C. Conclusion and motives.

A.

1572 We found among the papers furnished by the 'Administration de l'Enregistrement' a statement of account drawn up by Father Rey and verified by comparing it with the books of the Enregistrement's office for Saint Laurent du Pont, showing the receipts and expenses from the year 1887 to the year 1896 incl. that is to say for a period of ten years.

It appears from such statement that the total receipts amount to 63015898,90 1573
and the and the total expenses to 30637289,80

making the average receipts 6301589,89
and the total expense to.....30637289,80

Difference 3237860,91

This statement alone contained important information, but we have deemed it advisable to supplement the same, by requesting the purchaser, inasmuch as we were making a valuation of the mark 1574
as of the twentieth of November 1897, to give us the receipts and expenses for 1897, which do not appear in the above statement.

Such receipts amounted to 07160000. Without any idea of possible fraud, but merely in order to take into account gifts in kind (liqueurs and elixirs) which might only have been entered in the account books for Stock and not in the account books for Receipts, and which might nevertheless be considered as adding to the value of the mark, we put ourselves in communication, through the intermediary of the 'Enregistrement' Department, with the 1575
Department for indirect taxes.

We were thus enabled to determine the exact quantity of alcohol used, and consequently (the degree in alcohol of the liqueurs and elixirs being known) the number of bottles and flasks shipped during the year in question.

Moreover, the average price of these different products being determined from a printed tariff which can be obtained at every agency and a copy of which is annexed to the papers in the case, it was easy to determine the total sales to which the goods that were shipped must have given rise in

1361

1576 1897. Inasmuch as such year "hardly differed from the preceding years"—to quote Father Rey's own words in his letter—the result was as accurate as possible for an annual average amount.

There were shipped from the distillery:

1. 5488 hectolitres 96 litres of alcohol (pure) for the liqueurs, average degree 43; 1276502 litres, average sale price six francs a litre, making the receipts	7659012.
1577 2. 160 hectolitres 6 litres of pure alcohol for elixir, average degree 68, about 23.538 litres, average sale price Fr.30.– a litre, making the total receipts	706140.
The gross receipts could therefore have amounted to	8.365.132.

B.

Proceeding with examination of the expenses, we accept the figures as given by Father Rey, with the

1578 following reservations:

Article 1. Purchase of Alcohol. As there has been taken as a basis for the receipts a quantity of 5649 hectolitres 2 litres of alcohol used in the manufacture of the products shipped from the distillery in 1897, the expenses must also be calculated on the same quantity and not on what may have been purchased to have on stock, viz.,

5649h02 at Fr.165..– per hectolitre–Fr.932.088,30 1579
The quantity of alcohol purchased as stated by Father Rey amounted to 1530000.—
There is a difference of at least Fr.597911,70

Art. 7. Taxes. The statement furnished by the Collector for direct taxes of St. Laurent du Pont only shows the total sum of Fr.9655,54
But the different indirect taxes paid at St. Laurent du Pont amounting to 29601,90

The total amounts to 39257,44
As the total set down for this item is only 30700.— 1580

Showing a difference of 8557,44

which ought to be taken into account; there should also be taken into account the reimbursement of the capital expended for purchasing and building St. Bruno's Hospital, if it is admitted that such Hospital ought to be entirely paid for by Father Rey, as a matter of fact, if not at law—(included in gifts and alms) 1581

Say an additional expense valued at Fr.62.500.—

Again, we should consider as a liability interest on the working capital which is necessary for the working of the factory: cash, alcohol on stock, sugar, bottles, corks, aromas and coals, making a total of about 2.500.000 francs at the commercial rate of 5% Fr.125.000

1582 But on the other hand, under article 13, the amoutn of Fr.210.000 for imitations, lawsuits and advertisements ought to be reduced, it seems to us, to Fr.60.000.

For according to Father Rey's own statement, advertisements only amount to from twenty to thirty thousand francs, making an average of Fr.25.000 and the surplus, viz., Fr.25.000 appears to us to be sufficient for 1897 to pay for proceedings against infringers, the decided cases being all agreed on this question of trademarks or at least so far as the products of Grande Chartreuse are concerned (See the detail of these cases in the leaflet among
1583 the papers in the case).

Lastly, by applying to article 12, the salaries indicated by Father Rey in the first part of his letter, for the staff at Fourvoirie, a much higher figure than Fr.180.000 would be arrived at. But it is difficult to understand why three Brothers, who live in the same place, should be acquainted with the formula of manufacture in its *entirety* and should earn a salary of Fr.40.000 each; such a high figure can only apply to the Manager himself. There still remain six Brothers to be remunerated and it would undoubtedly be found that a similar factory em-
1584 ployee rendering the same service would be paid Fr.5.000 a year.

Thus, 64 workmen at Fr.1.200 a year	Fr.76.800
15 employees at Fr.2.400	38.400
One manager	25.000
One sub-manager	15.000
5 Brothers, overseers at Fr.5.000	25.000
Total,	180.200

This figure is about the same as that given in the statement.

The figure of Fr.1.440.000 assigned to agents' commissions, that is to say about twenty per cent. of the total receipts, may seem exorbitant if the fact that agents only run insignificant risks and do not pay for advertisements is taken into account. Such per centum is even higher if from the total amount of receipts those orders are deducted which come direct to Fourvoirie without giving rise to any commission. 1585

In the absence of proof to the contrary, however, and in view of the fact that the books of Father Rey and Father Grézier, considered as manufacturers, that is to say as private individuals, are not accessible to us, we have not thought it advisable to contest this statement, which shall be considered accurate. 1586

But in any event it is necessary to add to the receipts for the products the amount of the annual sums received from the Customs Department as reimbursement of the taxes paid on sugar at the time of exportation, viz., according to Father Rey's statement, about Fr.35.000.

Assembling these different remarks, we have:

Gross total receipts for the products	8.365.152
Reimbursement of taxes on export sugar	35.000
Total,	8.400.152

1587

Total expenses as stated:

1. Amount	4.320.200	
2. To be added for taxes	8.557	
3. Interest on working capital	125.000	
Total,	4.453.757	

1588	To be deducted: On art. 1 and 13 for alcohol anl infringements	747.911	
	Remains	3,705.846	
			8.400.152
	Total expenses		3,705.846
	Net receipts		4.694.306

1589 The net receipts amounting to four million six hundred and ninety-four thousand three hundred and six francs a year, on an average, the question is what is the value of the marks and processes of manufacture, connexion and clientelage which ensure such considerable profits.

We shall examine this question in the third part of this report.

C.

In our opinion, the value of a mark depends on several things which it is necessary to examine:

1590 1. Its ancientness and the fidelity of its clientelage, attested by the increase in the business done or the keeping up of the same.

2. The utility of its products, whether the same be real, or merely admitted by the clientelage or the public.

3. The more or less facility with which the mark can be infringed.

4. The security of the manufacturer, that is to say, the permanent or precarious nature of the installation and importance of the loss which would be sustained in case a change was necessary.

5. The importance of the capital involved .

6. The amount to be set aside as a sinking fund, by reason of the more or less rapid wear and tear of the material, and the high price of such material. 1591

7. The increase of cost price.

8. The method of collecting bills or average loss.

The application of these different elements to the products of Grande Chartreuse and to the factory of Father Rey at Fourvoirie gives rise to the following remarks:

1. The recipe of Chartreuse is over a hundred years old. (See among the papers in the case M. Pouillet's Opinion.) Since it was invented the sale of the products has gone on increasing until it reached the total figure of nearly eight million francs; it has kept up this figure for a number of years, in spite of similar liqueurs which compete with it (Bénédictine, yellow liqueur Gallifet, Raspail, La Raphaele, Meunier). 1592

It can therefore be stated that "Chartreuse" is the finest liqueur for the table, and we may add that its exceptional reputation is justified by the choice alcohols and primary ingredients used and by the care with which every detail of the manufacture is attended to, as we were able to ascertain.

A breaking up of the clientelage is therefore inadmissible so long as nothing is changed in the actual state of things, and a considerable increase of the sales should not be counted upon either; the permanency of the receipts during a period of nearly eleven years seem to prove that they have attained their normal development. 1593

2. As regards utility, that is to say the relative necessity for such products, the same undoubtedly varies, according as to whether the liqueur or the elixir is considered, but it is generally recognized (and this is sufficient for the question which we are examining) the liqueurs and elixirs exercise, in different degrees, a favorable action or health, or

1594 at least constitute the necessary finish to a good meal.

3. Apart from the excellence of the alcohol, it is to the preparation of the Pères Chartreux and to the properties of the plants gathered in the massif of the Grande Chartreux that the public partly attributes the fineness and the properties of the liqueur and elixirs.

It is therefore necessary that the products be manufactured *in the district* and by a *Chartreux* in order to retain the confidence that they inspire, but so long as these two conditions are complied with, they constitute a veritable *monopoly* (See
1595 Didot-Bottin) and defy unfair competition. There is only left for defrauders to take advantage of retail sales, to sell a product which more or less resembles Chartreuse in bottles which previously contained the real article.

4. One of the first questions asked by the proposed purchaser of a business is whether the vendor is the *owner* of the premises and in case he is not whether *he has a long lease.*

It cannot be denied that the value of the business depends on the answer to these two questions.

We are compelled to admit, for truth's sake, that
1596 in this case, Father Rey's establishment at Fourvoirie and at Grande Chartreuse is evidently very insecure.

For he may be evicted either by his Superior, the Prior of the Order of Carthusians, who has undoubtedly the power to send him to another Chartreuse or to deprive him of the possibility of manufacturing at Fourvoirie, or at least only to allow him to do so under very disadvantageous conditions, for example, if he undertakes to pay for the expenses of all the other Chartreuses; or he may be evicted, and the whole Order with him, in case the

State should revoke the concession heretofore granted by it. 1597

The first hypothesis is perhaps not worth taking into account, but the second is a very different matter.

It is certain that neither the Royal Order of the 27th of April, 1816, nor the Imperial Degree which supplements it, dated the 6th of June, 1857, fix any length of time during *which the Domain of Grande Chartreuse may be used as a Convent.*

In strict law, therefore, it would seem as if a decree would be sufficient, even without any serious reasons, such as *abuse of power,* to put an end to such occupation of the Convent, and in this case 1598
it would be sufficient to remark that the grantees have changed into a liqueur factory, part of an estate which was granted to them to be used as a convent and house of prayer. (C.C. 1728-1)

Whatever may be the actual distribution of the local and public powers, it can be stated with certainty that Father Rey is liable to be requested to leave Fourvoirie in a short time.

As to the loss which may ensue, it will fall as follows:

1. On the depreciation of the plant, but it does not seem as if we ought to take this depreciation into account, inasmuch as, according to Father Rey's own statement, he considered the same when he reduced to less than Fr.100.000 the value of the plant. 1599

2. On the manufactured products, the supplies and the mark itself.

In this connection, it is sufficient to repeat that the mark owes its value partly to the exceptional

1600 quality of the products, as recognized by the public, which are really gathered *in the country,* as we were able to ascertain by the herb plantations in the gardens of Fourvoirie and of the Convent.

That moreover, it would be necessary to proceed anew, *in the entire world,* with the filing of other models of labels and bottles at the Clerks' Offices and Offices established for such purpose.

Father Rey could no longer, in our opinion at least, put on the labels and bottles the words: "Liqueur manufactured at Grande Chartreuse," because the only domain in the world has a right to the name of "Grande Chartreuse" is the domain sit-
1601 uated in the parishes of St. Pierre de Chartreuse, St. Laurant du Pont, Miribel les Echelles, or in other words in the Department of Isère and which belongs to the State.

By transferring the manufactory in another estate where the supreme head of the Order shall accompany him in order to found the principal establishment of the Congregation, Father Rey could offer the public products from the Grande *Chartreuse* of Pavia, for example, (Chartreuse being here taken as a common name) but not products from Grande *Chartreuse* (Chartreuse taken here as the name of
1602 a district) without any other addition.

This results from article 1 of the law of the 28th of July, 1824, which reads as follows: "Who-"ever inserts whether by addition, or suppression "or by any alteration, on manufactured products, "the name of a manufacturer than the real manu-"facturer, or the commercial name of another fac-"tory than that where said articles were manufac-"tured, *or the name of another place than the place "of manufacture,* shall be punished and article 423 "of the Penal Code shall be applied to him, with-"out prejudice of any damages, if there is any oc-"casion for the same."

"Any merchant, commission agent or retail deal- 1603
"er shall be liable to prosecution if he wittingly
"sells or puts on the market articles bearing *sup-*
"*posed* or altered names."

The meaning of this provision appears to us clear: it is not allowed, for instance, to sell under the name of "Beurre d'Isigny" butter manufactured at Beaurepaire; a farmer of Beaurepaire may have sold for thirty years and more his produce under a label containing the name of such locality without for that reason acquiring the right to keep the same label, should he transfer his business elsewhere.

The word "Chartreuse"—"Products of Grande Chartreuse" does not only convey the idea of a 1604
liqueur invented by the Chartreux Fathers, manufactured according to their secret and sold under labels and in bottles which they own and which they may therefore manufacture and sell wherever they please without changing anything thereto.

On the contrary, it has been held, by a line of unbroken decisions, the detail of which is hereinafter set forth, that the words "Chartreuse," "Products of Grande Chartreuse" indicate at the same time not only the manufacturers: the Chartreux Monks, but also and *above all*, as held by the Court of Appeal of Lyons, 1st of August, 1879, Gallifet Cion. 10th August, 1880, the *place of manu-* 1605
facture.

Consequently if he left Fourvoirie, Father Rey could no longer put on his labels the words: "Liqueur manufactured at Grande Chartreuse," as in the label below:

LIQUEUR FABRIQVÉE
Á LA GRANDE CHARTREUSE

L. Garnier L. Garnier

Filed 1-7-69 Lith. Allier Grenoble

1606 It would seem moreover as if the manufacturer to whom the State may grant the domain and convent, after the departure of the Chartreux monks, would alone have the right (by adopting, of course, bottles and labels which differed from those already filed) to sell products or liqueurs "manufactured at Grande Chartreuse."

Moreover, it is not the Chartreux monks who *gave their name* to the region and to the convent, but it is St. Bruno himself who *adopted* for his monks the *name of the district* where he established his retreat; this appears from a book called "La Grande Chartreuse par un Chartreux" which is an
1607 authority on the subject, and from a book by Mr. Henri Ferrand, a lawyer: "Les Montagnes de la Chartreuse" (page 112).

After the expulsion of the Order by the Revolution, the Domain kept its name of Grande Chartreuse; it is designated under this name in the Order of 1816 and the Decree of 1857, in the official statement of real estate closed on the 20th of January, 1834 (No. 141, section A) on the plan of the country kept in the archives of the Forest Department, a copy of which is among the papers in the case; also on the Staff map.

1608 A casual examination of some of the judgments and decisions rendered in matters of trademarks, both in France and abroad, in favor of Father Garnier and Father Grézier, predecessors of Father Rey, seems to us to justify our opinion.

One of them reads as follows:

Judgment of the Commercial Court of Grenoble, 31st of December, 1852.

Father Garnier and Rivoire Brothers.

The Court considered that Father Louis Garnier is the sole owner of the liqueur known under the name of Chartreuse, *which derives its name from the place where it is manufactured.*

"Whereas the marks, seals and labels which appear on the bottles and flasks were filed with the Clerk of the Commercial Court on the 20th of November, 1852; 1609

"Whereas Messrs. Rivoire et Cie, by giving to a liqueur *manufactured at Grenoble* the name of "Chartreuse Liqueur" having taken possession of a name which is the property of Louis Garnier, and that, by so doing, their intention was to take advantage of the justly acquired reputation of the liqueur *manufactured at Chartreuse itself.*

"Now therefore, the Court prohibits * * * Decision of the Court of Grenoble of the 25th of May, 1853 (same case). 1610

"Whereas a commercial mark and the *names of places*, persons and goods which are part of the same, and which designate the particular products of a factory, constitute a property protected by law, and more especially by the law of 22 Germinal an XI and that of the 28th of July, 1824.

"Whereas the whole of Rivoire Brothers system consists in contending that inasmuch as they have the right to manufacture the liqueur in question, they have also that of naming it "Chartreuse," such name being the only name under which it is known and under which it is possible to designate it. 1611

"Whereas the name of "Chartreuse" is merely an abbreviation of the label of the Chartreux Monks' liqueur, is not a generic name, as would be a name derived from the nature of the liqueur and of the ingredients of which it is made; that such liqueur was only so named because it was *invented* at the *monastery* of *Grande Chartreuse* and *there manufactured* by the Chartreux, so that the name indicates at the same time the inventors, the manufacturers and the *place of manufacture* and that it constitutes, from each of these points of view, a distinctive mark, a meaning such as that it cannot be

applied truthfully to a similar product manufactured at *Grenoble* by Rivoire Brothers.

"Whereas the Chartreux Monks have not the monopoly of the composition of their liqueur, but that they have not communicated their process of manufacture; that as a consequence thereof, the firm of Rivoire have the right to manufacture a similar liqueur, if they are able to do so, and in the absence of another name, to give it one derived from this very similitude, of which the public shall be judge, but that the name "Chartreuse" cannot be used on their labels and advertisements unless some other expression is added thereto which will make of it a simple term of comparison."

Judgment of the Police Court of Lyons—8th of May, 1855.

"Whereas it is proved that Charrière manufactured at *Lyons* in 1854 and in 1855 liqueurs and elixirs imitating those of Grande Chartreuse and that he affixed on the bottles containing the same the name of Father Garnier, Procuror of Grande Chartreuse, *and at the same time stating that the monastery was the place of manufacture;* that he has therefore been guilty of the offence punished by the law of the 28th of July, 1824 * * *"

Judgment of the Commercial Court of Algiers—2nd of July, 1853.

(As regards the question of similitude.)

"Whereas it is not contested that the liqueur manufactured and sold by Thomas is called 'Eau véritable de la Grande Chartreuse' * * * that it is not the word 'liqueur' or 'eau' which, as in the

present case, can inform the purchaser of the real origin of this product; that the name of Grande Chartreuse alone conveys the idea that the "liqueur" or "eau" is manufactured at the monastery known as "Chartreuse"; that such name, adopted by Louis Garnier, has nothing to do with the name of a town, or province or country, such as Bordeaux, Cognac, Bourgogne and others, *whose generic name include a vast region which makes it necessary for every manufacturer residing in the same place to add to his products a special name or indication to designate his industrial establishment,* but that on the contrary it cannot be logically contested that the name "Chartreuse" is the name, and the only name, given to the community which has been established for centuries at the *Convent of the Chartreux.* 1615 1616

Judgment of the Police Court of Grenoble—2nd of April, 1857

(Father Garnier versus Berthe.)

"Whereas Berthe is summoned before the Court because * * * he affixed on liqueurs manufactured by him, the name or commercial name of the Chartreux Monks, and the *name of a place* which is not that of the place of manufacture * * * 1617

"Whereas it has been ascertained that in 1854 and in 1855, Berthe established himself in a *village called Creux,* in the parish of Isieux, near St. Etienne; that *he manufactured liqueurs thert,* which he offered for sale and sold under the name of Grande Chartreuse; that it is true that he states that following the words "Liqueur factory of Grande Chartreuse" he added the following: "of Creux," but that even if such statement is justified,

1 18 it is a gross deception, since *it is clearly proved that no Chartreuse, whether small or big, bearing the name of Chartreuse of Creux, has ever existed.*

Judgment of the Civil Tribunal of the Seine—27th of July, 1868.

(Father Garnier versus Mrs. Brion, a widow.)

"Whereas L. Garnier manufactured *at the Convent of Grande Chartreuse* a liqueur known in the trade under the name of "Chartreuse"; and that in order to distinguish his products he put on the
1619 bottles containing the same a rectangular label bearing the words: liqueur manufactured at Grande Chartreuse.

Whereas L. Garnier filed on the 20th of November, 1852, and on the 13th of November, 1864, labels to be used as trademarks with the Clerk of the Commercial Court of Grenoble, *his place of residence.*

Judgment of the same Court, 27th of January,
1620 1869. (Father Garnier v. Maître.)

Whereas Garnier filed * * * two labels as trademarks * * * whereas he put the first of these labels on the bottles which contain *the liqueurs really manufactured* at the *Convent of Grande Chartreuse,* and the second on the cork of the bottle * * * Condemns * * *

Judgment of the Court of Appeals of Paris of the 5th of February, 1870—On appeal of a judgment of the Tribunal of the Seine of the 1st of December, 1869.

(Father L. Garnier versus Father Garnier and Henriot.) 1621

* * * Whereas the name of "Chartreuse" which is merely an abbrevation of the label of the liqueur of the Chartreux monks cannot be considered as a generic name as would be a name derived from the nautre of the liqueur or of the aromatic plants which compose the same; that such liqueur was only so named because it was invented *at the monastery of Grande Chartreuse and is manufactured there* by the Chartreux; That the name which designates at the same time the inventors, the manufacturers and the *place of manufacture* constitutes, from three points of view, a distinctive mark 1622
and a specification which cannot be applied, without encroaching upon their rights, to any other similar or analogous product * * *

Judgment of the Court of Cassation—26th of April, 1872

Same as the above.

Circuit Court for the Southern District of New York, December 6th, 1876. (Father Grézier versus Chalvin.)

* * * Now therefore, the Court adjudges and 1623
orders as follows: 1. That the plaintiff Gabriel Alfred Grézier, *Procuror of the Convent of Grande Chartreuse* in the Department of Isère, French Republic, has the *exclusive right to use* the word, "Chartreuse," as a trademark for liqueurs or cordials.

Chancery Division, England—13th of January, 1877.

1624 (Father Grézier and Rappolt & Co.)

The Court, by consent, orders that an injunction order be rendered against the defendants Rappolt & Co., enjoining them, as also their employees and agents, from selling or offering for sale, or advertising under the name of "Liqueur manufactured at Grande Chartreuse" or under any other name, any liqueur not imported *from* or *manufactured at the monastery of Grande Chartreuse,* at or *near Voiron* (Isère) in the Republic of France, and not procured from the plaintiff Gabriel Alfred Grézier, or his agents, with the statement that the liqueur is so imported, made or purchased.

1625 Also from selling or offering for sale or advertising as a liqueur not *imported or made at said monastery.*

Also from advertising or circulating any notice or commercial circular, or using or selling any label or cork containing any indication that the liqueur so sold or offered for sale by the defendants, and *not imported from or made at said monastery is the same or similar to the liqueur made at said monastery.*

1626 Same Court, 23rd of January 1877—(Father Grézier v. Taylor)

Same decision.

Civil Tribunal of the Seine—9th of April 1878.

Whereas, in spite of the publicity of said agenceies and of numerous decisions of the Courts of Appeal of Grenoble, Lyons, Paris, and of the Court of Cassation, which have confirmed tht rights of the Chartreuse Monks, a certain number of distillers and of merchants persist either in infringing the marks, labels filed, or to make use of the names "Chartreuse" or "Chartreux" to sell liqueurs which do not *come from Grande Chartreuse.*

Whereas such infringements are all the more annoying because of the fact that they may deceive the public as to the nature of the article sold and may lead the public to suppose, contrary to the truth that the name *"Chartreuse" is the generic name of a certain kind of liqueur,* whereas on the contrary the Chartreuse monks have *only made use* of the same to indicate *the origin* of the different liqueurs 1627

Police Court of the Seine—29th of May 1878.

Whereas * * * it appears from the examination and pleadings that the name "Chartreuse" without further addition, under which *the liqueurs made at the Convent of Grande Chartreuse,* have been designated for a long time, in daily use, and which is merely the usual abbreviation of the labels affixed on such products, cannot be considered as generic name * * * that such liqueur is only so named because it was invented *at the monastery of Grande Chartreuse* and is *manufactured by the Chartreux there;* that such name is only the abbreviation and equivalent of a fuller name; that it indicates at the same time the name of the manufacturers—the Chartreux monks—the name or commercial name of the factory, and finally the *place of manufacture, that is to say the monastery of Grande Chartreuse.* 1628 1629

Chancery Division, England—July 27th 1878.

(Father Grézier v. Polimeni)

Decision on the same grounds as the judgments of the 13th and 23rd of January 1877, above set forth.

1630 Civil Tribunal of the Seine—7th of August 1878.

(Father Grézier v. Cusenier)

Whereas the fact that the defendant made use of the word "Chartreuse" to designate a similiar liqueur *which is not made* at the Convent of Grande Chartreuse, constitutes an usurpation which is *prohibited and punished by the law of the 28th of July 1824.*

Same Court—Judgment of the 18th of January
1613 1879.

(Father Grézier v. Solon)

Whereas the different liqueurs that the plaintiff and his predecessors have put or now put on the market, all bear the words *"Manufactured at* Grande Chartreuse" and that such indication as to the place of manufacture would be sufficient in itself and *without any filing* to ensure him the exclusive ownership of such name, which *no one has the right to use.* * * *

Whereas, however, and notwithstanding the great publicity * * * (as in the judgment of this same Court of the 3rd of April 1878, hereinabove
1632 analyzed) * * * the Court enjoins. * * *

Police Court of the Seine—January 29th 1879.

(Father Grézier v. Détang)

Whereas on the labels of the bottles which he puts on the market, Détang states that the liqueur contained therein is manufactured at "Petite Chartreuse" and that these words "Petite Chartreuse" appeared on the bottle engraved in the glass.

Whereas it is proved that Détang ever since

1380

1867 is the owner of a house, with outhouses and a garden, situate at Beaune, Faubourg Madeleine; that, as early as 1817, such house bore the name of "Les Petis Chartreux" or "La petite Chartreuse" to distinguish it from another and much bigger house, also situate at Beaune, called "La Chartreuse," and which was not far from Détang's house; whereas, in order to prove that, *in spite of such circumstances, Detang violated the law of 1824, it would be necessary to prove, against him, that he only acquired such property in order to have a title which would allow him to insert* the word "Chartreuse" on the bottles containing the liqueur made by him; that such proof not having been furnished, and *the name of the place of manufacture* inscribed by Détang on his bottles and on his labels *being a real name*, the application of the law of 1824 cannot be asked by the plaintiff, and that on this subject, he only has a civil action. 1683 1684

As to the aplication of thelaw of the 23rd of June 1857:

Whereas the above mentioned facts (*imitation of the form and label of the bottles of Grande Chartreuse*) constitute, as far as Détang is concerned, a fraudulent infringement of the commercial mark and trademark. * * * Condemns * * * 1685

Police Court of Grenoble, August 28th, 1878.

(Father Grézier v. Rivoire.)

Whereas it is a well known fact that Etienne Rivoire, a liqueur manufacturer *of Allevard*, has exposed, offered for sale and *sold at said place*, liqueur bottles similar to those of the plaintiff, and bearing engraved and embossed in the glass the words "Ancienne Chartreuse de Saint Hugon"; whereas the body of said bottles bears a quadran-

1686 gular label having the same shape and the same color as those filed by the plaintiff * * * whereas such label contains in a square having the same aspect, the following indications, printed in similar characters to those of the labels filed by the plaintiff: "Liqueur made at the old Chartreuse," and in the inferior angle of the left side "Saint Hugon"; in the opposite angle, the signature E. Rivoire framed by a flourish imitating that of Father Garnier; that the same similar indications are to be found in the exergue of the round labels of guarantee.

1687 Whereas the rights of the plaintiff have been proclaimed in numerous decisions; whereas it has been adjudged, particularly, that the word "Chartreuse" applied as the name of the liqueur made by the monks whose representative Father Garnier was, is *merely the abbreviation and equivalent of a fuller name;* that it indicates at the same time the name of the manufacturers (Chartreux Monks) and the *place of manufacture,* that is to say, *the monastery of Grande Chartreuse.*

Therefore by appropriating *the name "Chartreuse,"* the defendant was guilty of *usurping the name of the place of manufacture,* which offence is punished by the law of the 28th of July 1824.

1688 Whereas, by application of the above, the inscription on the glass and the labels of the bottles of Rivoire of the name "Chartreuse" constitutes an usurpation of the name of the place of manufacture.

That the addition, is a sub-title and in a separate corner of the words "Saint Hugon" is merely the *indication of a fictitious place of manufacture* and cannot be taken seriously; that it appears from the explanations of the accused on the trial of the case, *that he never made any liqueurs in the old ruins of the monastery of Saint Hugon, which cannot possibly be used* for a like purpose and of which he is not

the owner * * * that such addition was imagined by Rivoire in order that he might the more easily apply himself to unfair competition, and, if need be, reserve an argument in his defence. * * * 1639

Judgment of the Civil Tribunal of the Seine—27th of April 1879.

(Father Grézier v. Foullain)

Same grounds as those of the judgments rendered by the same Court on the 13th and 23rd of January 1877.

Judgment of the same Court—25th of February 1880. 1640

Same grounds.

Police Court of Milan—7th of March 1878.

(Father Grézier v. Branca and others)

Criticism on the ground of the *absence of any indication as to the place of origin,* upon filing in Italy; the civil party to the proceedings (Father Grézier) stated that he, Grézier, was meant by the words *"Grande Chartreuse"* since it is the *name applied to the locality where the convent is situated, and he proved this* by producing *the commercial Directory Didot Bottin.* 1641

Moreover, they (honest tradesmen) all know that such name indicates the place of origin, and that it differs on this point from the simple word "Chartreuse" which is used to designate the liqueur; and this is what the accused Joseph Branca made quite clear when he said that he sold *Chartreuse of real origin.*

Therefore "at Grande Chartreuse" *can only mean the place where the liqueur is made:* it is the place

1642 that is meant by the name, just as Marsala, Maderia, means the place of origin of such products: it is not necessary to look up in the dictionary or to be well acquainted with the French language to know whether "liqueur made at Grande Chartreuse" means "liqueur made *for the use* of Grande Chartreuse," since, *in any case*, one is confronted with a well-known geographical name, and that *in such locality, the Convent has been making the liqueur from time immemorial.*

1643 Judgment of the Civil Tribunal of Lyons—11th of December 1878.

(Father Grézier v. Gallifet)

Whereas it is proved as a matter of fact, and has been several times proclaimed in decisions of the Courts, that the name of "Chartreuse" is only an abbreviation of the label of the liqueur of the Chartreux and that it cannot be considered as a generic name * * * that such liqueur was only so called because it was *invented at the monastery of Grande Chartreuse*, and is *there manufactured* by Chartreuse monks (see Grenoble May 25th 1853); and that under these circumstances, such name con-
1644 stitutes a distinctive mark and a specification which cannot be truthfully applied to a similar or analogous product *made at Lyons by Gallifet.*

Whereas Gallifet also contends that by designating his products by the name of "Chartreuse," he has not really usurped either the name of the Chartreux Monks or the place of manufacture which is, so he says, at Fourvoirie and not at Grande Chartreuse, or their commercial name which, according to him only consists of the signature "Garnier": but whereas it appears, on the contrary, from the documents filed in the case and already commented

upon by the Courts (Cassation April 26th 1872) 1645
that the name of "Chartreuse" applied as a name for the liqueur made by the monks whose representative Father Grézier is, having succeeded to Father Garnier, indicates at the same time the name of the manufacturers (the Chartreux monks) and the *place of manufacture, that is to say the monastery of Grande Chartreuse where if the manipulations do not all take place, at least the liqueurs undergo a special preparation which constitutes the secret that has so long been sought in the trade.*

Decision on appeal of the judgment of the Court of Lyons, 1st of August 1879.

Whereas on the other hand and as far as the 1646
application of the law of the 28th of July 1824 is concerned, the name of "Chartreuse" applies to liqueurs made at Grande Chartreuse is not a generic name which has become public property; and if such name is generally admitted in the trade or among the public, it is merely as an abbreviation of the labels belonging to such liqueurs; this name is *not that of the commercial firm which does not exist,* but that of the manufacturers, the Chartreux Monks and *particularly the place of manufacture* which is *Grande Chartreuse;* such name is therefore as much as the original designation "Liqueur made at 1647
Grande Chartreuse", the exclusive property of the plaintiff, so that the defendant cannot, without being guilty of usurpation, apply it to a similar analogous product *made in another place than Grande Chartreuse.*

Court of Cassation, confirming judgment of Court of Appeal, 10th of August 1880.

Whereas the decision which it is sought to reverse states:

1648 * * * 3. That the name of "Chartreuse" instead of being as the plaintiffs (Gallifet) contend, a generic name which has become public property and which serves to indicate the nature of the manufacture of a certain kind of product, is a special name, abbreviated from a fuller one, which the trade and the public apply to a certain product, and which contains the name of those who manufacture it, the Chartreux monks, and *especially the name of the place where it is made*: Grande Chartreuse.

Whereas, under these circumstances, in deciding that Gallifet & Co., who made use of the word "Chartreuse" in connection with a similar liqueur
1649 *manufactured elsewhere than at Grande Chartreuse,* usurped at the same time a mark and a name which belonged exclusively to the products of the eventual defendant, said decision, far from having violated the above mentioned articles of the Code, made a just application of the same.

Second decision, same day, same Court.

(Father Grézier v. Brunier Brothers)

Decided as above.

1650 Decision of the Court of Appeal of Turin—(Before the Chamber for misdemeanors)—12th of August 1879.

(Father Grézier v. the firm of Ballor)

Whereas Edouard Pelaez having filed a summons and complaint on the ground of the violation of the law of the 30th of August 1868, in the name and on behalf of Alfred Grézier, owner of the labels, marks and distinctive signs of the liqueurs, elixirs and other similar products known as *"Grande Chartreuse" near Grenoble, France;*

Whereas there can be no difficulty in this case to prove that Gabriel Alfred Grézier is *Procuror of*

the Convent of Grande Chartreuse, near Grenoble in France and that the marks and signs in question refer to the products of such convent. * * * 1651

Judgment of the Court of Cassation of Turin. March 3rd 1880.

As regards the application of Edouard Pelaez, in his capacity as attorney in fact of Alfred Grézier, owner of the marks which serve to distinguish *the liqueurs made at Grande Chartreuse, France.*

Whereas the Court of Appeal of Turin declared, in the decision which is appealed from, that the following facts and circumstances must be admitted, to wit: 1. That Grézier, who filed the application, obtained on the 23rd of February 1876, a certificate granting him the exclusive use in Italy of the marks which serve to distinguish the products of *Grande Chartreuse near Grenoble*, which marks are already legally used by him in France in the business connected with such products. 1652

Police Court of Turin.
12th of January, 1882. 1653

(Father Grézier v. Martini and Rossi)

Martini and Rossi were accused of having with the help of infringements and fraudulent imitations of the marks, signs and emblems already legally used in France and in Italy by Alfred Grézier, to distinguish in the trade the bottles containing the *liqueur of Grande Chartreuse near Grenoble*, fraudulently put on the market for sale, under said name * * * a special product of said firm of Martini and Sola.

1654 Judgment of the Court of Appeal of Brussels. 13th of April 1882.

(Father Grézier v. Melkior Son & Co.)

Whereas, it appears from all the documents in the case, and that it is moreover a matter of public notoriety that Grézier, and Garnier before him, is the sole legitimate owner of the mark under which the liqueur *made by the monks of Grande Chartreuse* is sold

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Chancery Division, England.

1655 19th of January 1883.

(Father Grézier v. Barnett)

The Court orders * * * that his employees and agents be forever enjoined from infringing the marks filed in the name of the plaintiff, Gabriel Alfred Grézier, and from selling * * * under the the name of "Liqueur made at Grande Chartreuse" — "Grande Chartreuse" — "Gde Chartreuse" "Liqr. made at Gde Chartreuse" or under any other name or designation in which the word *'Chartreuse' appears,* any liqueur which is not made by the plaintiff Gabriel Alfred Grézier or his lawful predecessor, Louis Garnier, *at the Convent of Grande*
1656 *Chartreuse, near Voiron Isere* (*France*) and from selling * * * a liqueur which was not made by said Gabriel Alfred Grézier or Louis Garnier at said convent, letting it be understood that such liqueur was made there.

Royal and Imperial Court of Lower Austria.
27th of March 1886.
(Father Grézier v. H. Lewitus)
* * * As regards the application of H. Lewi-

tus for an appeal from the judgment of the 20th of February 1886, by which said Lewitus was declared guilty of wittingly violating the right to the mark *of the Liqueur made at Grande Chartreuse.* on the 14th of July 1877. * * * 1657

Judgment of the Civil Tribunal of Grenoble, 1st of August 1885.

(Father Grézier v. Bonal)

* * * On the dismissal of the case on the ground that inasmuch as the manufacture of the liqueurs and elixirs of Grande Chartreuse is carried on at Fourvoirie, in the parish of St. Laurent du Pont, the fact of inscribing on the bottles and flasks the words "Liqueur made at Grande Chartreuse"—"Elixir végétal of Grande Chartreuse"—constitutes a violation of article first of the law of the 28th of July 1824 and cannot be used as a basis of an action brought by Mr. Grézier, on the ground of the usurpation of the name of the place. 1658

Whereas the manufacture of a liqueur does not merely consist of its distillation, but of all preliminary manipulations and therefore one ought to consider as the place of manufacture, not only *the place where such liqueur is prepared,* but also *the plants and essences* of which it is composed are obtained; that it is a well known fact composed are obtained; that it is a well known fact that the *mixing* of the different essences of plants *takes place at the Convent of Grande Chartreuse, and not at Fourvoirie, where only the distillery is situated;* 1659

That moreover, *the name of Grande Chartreuse applies to the different establishments,* convent, distillery, hospital and farm which are included in the estate known as the estate of *the Chartreux* in the *Canton of Saint Laurent du Pont.*

1660 Court of Appeal of Grenoble of the 8th day of February, 1887.

Court of Cassation of the 19th of January, 1887. Upholding the judgment.

Court of Rio de Janiero, 1st of February, 1888. (Father Grézier v. Santos, Guedes & Co.)

Following on a seizure * * * for infringing the labels of the liqueur *made at Grande Chartreuse* said Santos and Guedes were declared "pronunciados" by the criminal judge of the seventh dis-
1661 trict.

Judgment confirmed on appeal, by virtue of the above decision of the Court of Rio.

Chancery Division, England
23rd of March, 1890.

The Court enjoins Adamson from selling * * * under the name of "Chartreuse," or under any other name including the word "Chartreuse" a liqueur which is not or was not made by the plaintiff or his assignee *at the Convent of Grande Chartreuse in*
1662 *France.*

Police Court of Posen—11th of January, 1890.

(Father Grézier v. Schachmann.)

The accused is declared guilty of having violated the law on the protection of marks, to the prejudice of Alfred Gabriel Grézier, *a manufacturer of liqueurs at Grande Chartreuse*, and is condemned, on this ground, to the payment of a fine of 150 marks * * *

Judgment of the Police Court of Nice, 12th of July, 1883.

(Father Grézier v. Victor) 1663

Whereas it is expedient to cause *the property of the Convent of Grande Chartreuse* to be respected and to put an end to unfair competition, the result of which is a tendency to depreciate the products manufactured by said convent.

Chancery Division, England—19th of January, 1883.

(Father Grézier v. Samuel Fronner)

The text of which was identical with the decisions already rendered by the same Court, and also 1664
mentioned the liqueurs made at *the Convent of Grande Chartreuse, near Voiron Isère, France.*

* * *

Other decisions literally identical rendered by the said Court:

May 22nd, 1884—Father Grézier v. Croite & Co.

Nov. 12th, 1886—Father Grézier v. Stevenson & Howelt.

Feb. 21st, 1890—Father Grézier v. Scott Wright & Co.

March 21st, 1890—Father Grézier v. Waters & Co.

June 3rd, 1890—Father Grézier v. Simon & Co. 1665

August 2nd, 1895—Father Grézier v. Hippolyte Antran.

Commercial Court of Brussels—June 30th, 1890.

(Father Grézier v. Lefebvre and Pisort Brothers)

Whereas the *name of a place* which has been attached to a product for a very long time *and which serves to make it known* or to designate a process of manufacture, confers an exclusive right; and another manufacturer, *who possesses in such place no factory or agency* cannot be allowed to make use of the name of such place in his trademark * * *

1666 Judgment rendered by the same Court, on the same day.

(Father Grézier v. Emile Legrand)

Same grounds.

Commercial Court of Ilfor-Bucarest—13th February, 1895.

(Father Grézier v. Basilai)

The Court: In view of the action brought on behalf of and in the name of Mr. Alfred Gabriel Grézier * * * against E. Basilai, on the ground
1667 that the latter put a liqueur *which was not made at Grande Chartreuse,* in several bottles which had contained prior thereto the *genuine liqueur made at Grande Chartreuse,* on which bottles were affixed the marks of the plaintiff * * * Whereas Mr. Gabriel Alfred Grézier, owner of the marks which *serve to distinguish* the liqueurs *made at Grande Chartreuse,* filed said marks in France * * * The Court condemns * * *

See in this same connection, the settlement made and entered into on the 23rd of July, 1897, by and between Father Grézier and Messrs. Rely Brothers at Limoges (a copy of which is to be found in the
1668 supplement published at Currière) in whch appears the following:

Art. 1. Mesrs. Rely Brothers acknowledge the absolute and exclusve rights of Father Grézier to the distinctive marks of the liqueur made by him described as "Liqueur made at Grande Chartreuse" and more particularly to the name "Chartreuse" which constitutes the abbreviation and essential part of his mark, indicating at the same time the place of manufacture.

The decisions of the High Court of Justice of England, Chancery Division, of the 29th of Decem-

ber, 1897, and 4th of February, 1898, also mention the liqueurs, essences and cordials made *at the monastery of Grande Chartreuse, France.* 1669

An agreement signed at Barcelona on the 14th of February, 1898 (See above mentioned Supplement, page 70) also tends to protect those products alone which are made at the convent of Grande Chartreuse; it should be pointed out that Father Rey signed it; it can be concluded therefore that Father Rey accepted without any reservation the interpretation recognized by his predecessors and confirmed by a number of decisions, concerning the nature of his mark.

Finally, in an Opinion dated the 5th of April, 1896 (a printed copy of which is among the papers in the case) signed by Mr. Pouillet, a barrister (avocat) of the Court of Appeal of Paris, we find, page 5, last paragraph, on the subject of the contention of Mr. Meunier, that the secret of manufacture of "Chartreuse" had only duly assigned to him the following lines: 1670

"The communication of such secret could have no other effect than to place Charles Meunier in a position where he could manufacture an elixir bearing more or less similarly to that of Father Garnier; such communication could not give him in any way the right to sell such elixir *under the name of elixir of Grande Chartreuse* or to make use of a name which could not belong to him and *that even Dom Rivière had no right* to assign to him. Can a manufacturer of *Elbeuf* cloth who communicates to a manufacturer of *Voiron* all his processes of manufacture transfer to the latter the right to designate *the cloths manufactured at Voiron*, according to the Elbeuf processes, by the name of "Elbeuf cloths?" 1671

The eminent lawyer quotes in support of this theory, the text of the law of 1824 and he adds

1672 (page 9) "The manufacturer must be sincere as regards the origin of the goods which he puts on the market and he is not at liberty to deceive the consumer by providing him, under the name of the place which he has himself made famous, products which do not come from such place and which he has procured from elsewhere."

The question should therefore be raised whether, in 1842, Father Garnier was in a position to authorize Mr. Meunier to sell, under *the name of Grande Chartreuse,* a liqueur *which did not come from Chartreuse,* and which was made elsewhere.

In order to settle the question, it is sufficient to
1673 remember that in a long run of unbroken decisions (See particularly Grenoble, May 25th, 1853—Paris, February 5th, 1870—May 19th, 1870—Lyons, August 1st, 1879) it was held that the name of "Chartreuse" applied to liqueurs made at Grande Chartreuse is not a generic name as would be a name derived from the nature and composition of such liqueurs, but is merely an abbreviation of the labels of Father Grézier, which indicates at the same time the inventor, the manufacturer and the *place of manufacture.* And these decisions add—and this is a necessary consequence— that the fact of making use of the name of "Chartreuse" to designate a
1674 liqueur bearing *more or less resemblance to the other but not obtained at the Convent of Grande Chartreuse,* constitutes the usurpation of a name, in the sense of the law of 1824.

It is therefore established, by these decisions, that the name of Chartreuse, or Grande Chartreuse, is the name of a place at the same time as the name of the manufacturer, and that no one is at liberty, without committing an offence and without being guilty of deceit as to the origin, to give the name of Chartreuse or Grande Chartreuse to a *liqueur which does not come from the convent itself.*

Do we not see what consequences the contrary system would lead to? It would lie in Father Grézier's power to authorize *whom he liked* and *where* he liked to manufacture chartreuse; he could even authorize its manufacture abroad by any process whatever * * * 1675

We therefore feel authorized to conclude from this outline of the decisions rendered on the question (and we have made the same as complete as possible by reason of the exceptional importance of the question from the point of view of the examination and valuation) that the withdrawal of the concession of 1857 would result in the ruin of Father Rey's business. 1676

All these judgments, obtained by his predecessors, on the question of infringement, and which fill an entire volume (See the Great International Dictionary of industrial property rights, special extract relating to Chartreuse published by Alcan Levy, 24 Rue Chauchat, in 1890—and the supplement to such extract published by the 'Ecole des Sourds et Muets' of Currière in 1898) ought to be modified, and the filing of the marks, as also the marks and labels themselves should be renewed. 1677

As to the material, the greater part of which constitutes immovable property, it should be left on the premises, and the removal of the remainder would cost a considerable sum.

We have now to determine whether (leaving out of the question Father Rey's subservience to the Head of his Order) the withdrawal of the concession granted to the Chartreux Monks is a purely tuitous contingency or whether on the contrary it may come to pass at some future time.

This is, from every point of view, the most delicate part of our work.

1678 It is certain, on the one hand, that the Departments interested in the question see no objection to the present situation going on; this appears from a letter written by the General Director of the 'Enregistrement' on the 1st of June, 1898, which has been communicated to us and in which it is said that the representatives of the local departments, in a conference *recently* held at which the Prefect presided, unanimously expressed themselves in favor of the continuation of the concession of the estate granted to the Chartreux, so that the contingency of the withdrawal of such concession may practically be left out of the question.

1679 Such declaration is evidently very important, but it was made subsequently to the transfer; it could not therefore have been known by the parties or increase the value of the mark; it shows on the contrary that the question of the withdrawal of the concession was being discussed for some time and *was being discussed* at the time of the transfer of the mark.

It goes without saying that this circumstance alone could have had an untoward influence from the point of view of the security of the grantee, and that capitalists who might have been willing in the first place to invest considerable sums in a business

1680 of this kind, would have hesitated before they paid in the funds.

But it is important to take into account the fact that the favorable opinion which has just been referred to is that of executive agents, that it has merely a *consultative value*, and the competent ministers may or may not take account of the same, according to the attitude of the Deputies and Senators of both Houses.

It is therefore important to consult public opinion in general and those electoral circumscriptions particularly interested in the question.

The last manifestations observed appear to us significant, particularly as far as the parish of St. Laurent du Pont is concerned, where there is a liqueur manufacturer actively competing with the Chartreux Monks. 1681

Attention should be drawn, in this connection, to the wish expressed by the General Council in their sitting of the 1st of September, 1898, and Ballue's Bill, *taken into consideration by the Chamber on Deputies* on the 15th of November, 1880, which aimed at the repeal of the Decree of the 6th of June, 1857.

It will be sufficient, finally, to read the Right of Association Bill, recently presented to the Chamber of Deputies by Mr. Sévàes, representing the circumscription, and several of his colleagues and to examine the consequences which the passing of this Bill is likely to have, in order to come to an exact understanding of the situation. 1682

We are of the opinion, conscientiously, that the position of the grantee of the mark 'Chartreuse' is a really precarious one and that it is necessary to largely take this into account in order to arrive at a valuation.

5.—Let us now pass to the examination of this mark from the point of view of the importance of the capital invested therein. 1683

It is certain, all other things being equal, that a process by which one can make four million six hundred and ninety-four thousand francs a year, with a working capital (subjected therefore to possible loss) of ninety-six thousand eight hundred and fifty-nine francs, has a far greater value than if it were necessary, in order to derive the same profits, fits, to put in about ten million francs.

And this is the very case which presents itself here; it results from the accounts that Father Rey, inasmuch as he is neither the owner nor the pur-

1684 chaser of the buildings, and real estate, only risks, in all possible cases, ninty-six thousand eight hundred and fifty-nine francs, plus a possible loss on the forced sale of alcohols on stock which he could not make use of in the manufacture. But by valuing such risk at three hundred thousand francs, that is to say at four hundred thousand francs, including the material, the figure arrived at is nearly ten per cent. of the annual profits.

We need only add: 1. That the goods on stock can always be sold without any appreciable loss and that if the manufacture was interrupted for some time, the stock on hand would acquire a much
1685 greater value. 2. That Father Rey can only blame himself if the valuation of the actual plant at ninety-six thousand eight hundred and fifty-nine francs is not sufficient.

It will be necessary, therefore, to take into account, *when adding to the capital the annual income derived from the marks so granted*, the enormous profits made as compared with the capital subjected to the risks of the enterprise.

6. The question of the creation of a sinking fund for repurchasing the material is of no importance, because of the relatively low figure of its valuation and of the nature of such material (casks, trucks,
1686 rails, etc. * * *) the annual wear of which is insignificant.

The grantee himself values such expense at eighteen thousand francs (No. 10 of his statement) and such figure is evidently high, for it cannot be admitted that it would amount to twenty per cent., that is to say that the material would be entirely replaced in five years, for a business in which only sugar and alcohol are used.

7. The cost price or cost of manufacture amounts, according to the figures furnished by Father Rey, to a total sum of four million three hundred and twenty thousand francs.

A reservation should be made as regards several 1687
of the items included in the eighteen articles of this statement:

Art. 1. As above stated, the figure of one million five hundred and thirty thousand francs for the purchase of alcohol, should include only such alcohol as was used to manufacture the products already sold—that is to say, nine hundred and thirty-two thousand and eighty-eight francs 30 centimes .

Art. 2. Again the figure of one million four hundred and forty thousand francs for commissions to agents, amounts to an average of about twenty per cent. (on total sales amounting to seven million one hundred and sixty thousand francs). We think it 1688
necessary to state here that this average figure appears to us very high, if we take into account that the number of such agents or representatives is a very limited one, that they have no responsibility whatever, the liqueur being nearly always paid for on delivery, and that the fame of such products does away with the necessity of their travelling about or personally advertising such products.

The figure arrived at is even higher than twenty per cent. if the circumstance that a great many orders are given directly at Fourvoirie is taken into account.

1689
We have thought it advisable, however, to accept such figure for the reason above given, viz., that outside of the detailed examination of the books, it was very difficult to prove that as good a result could be obtained under cheaper conditions.

Art. 7. The amount of taxes paid is really, for an average year, thirty-nine thousand francs (See above, B) making eight thousand five hundred and fifty-seven francs which ought to be added to the expenses.

Art. 13. Advertising amounts to about from twenty to thirty thousand francs a year, and the

1690 total figure as given by Father Rey for such expense should be reduced by one hundred and fifty thousand francs, adding thirty-five thousand francs for possible actions at law (See above, B).

There is expended therefore, the sales amounting to eight million four hundred thousand francs, an approximate sum of four million six hundred and ninety-four thousand francs, that is to say a little over fifty per cent.

This is undoubtedly a splendid result which tends to increase the value of the marks so sold. The net profits of the Benedictine of Fécamp are only twenty per cent., and yet the business, which
1691 was turned into a Company in 1876, with a capital of two million five hundred thousand francs, its shares being then worth *five hundred francs,* is now exceedingly prosperous, its shares being officially quoted on the Paris Stock Exchange at *four thousand eight hundred and seventy-five francs.*

8. Finally, as regards the mode of payment, it is very simple: most orders are filled to be paid for on delivery and the grantee himself does not contest this considerable advantage, for in his statement, he does not insert any amount under the heading of profits and loss, collection expenses, etc. * * * unless item 18 for ten thousand francs represents
1692 the losses in question.

There only remains now to apply the above considerations to the valuation of the marks.

Before coming to this part of our work, we did everything in our power to obtain the necessary information for such purpose; we examined the balance sheets and inventories of several joint-stock companies, and particularly of liqueur manufactures (Bénédictine, Pernod, Noilly Prat, Picon, Cusenier, Martel) so as to find out how in the trade and in practice the marks and clientelage so

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transeferred or which compose a part of the business assets are valued. 1693

But such examination gave us totally different results, and it would be exceedingly difficult to draw therefrom a general rule applicable to this case.

We should first mention the clientelage of saloon keepers at Grenoble, which are sold for a price equal to five times the net profits of one year; it should be stated, however, that such a clientelage may be exceedingly short lived and cannot be sold, at proportionately the same price as the old mark of a liqueur which is famous all over the world.

We have found it preferable to take as a term 1694
of comparison the Benedictine of Fécamp which made about one million net profits in 1897 (seven hundred thousand francs of which were distributed among shareholders) and the value of which mark is set down at Fécamp, according to information we obtained there, at seven times such profits or seven million francs.

This is a liqueur, moreover, which unlike chartreuse, has not yet proved that it could survive infringements, or the dropping off of the clientelage; neither has it the monopoly of the name "Bénédictine" as Chartreuse has that of the name "Chartreuse." 1695

In this case, a capitali zation of ten per cent. seems to us acceptable from every point of view, for to sum up the above considerations, we have taken into account:

That "chartreuse" and the elixirs are considered extra fine liqueurs for the table and as possessing digestive properties; that the capital invested in the business is relatively very small; that the material is not considerable and is only subjected to insignificant wear; that the losses are trifling and the cost of manufacture only fifty per cent.

1696 **3. SUMMARY OF CONCLUSIONS.**

From the above figures, the annual profits are four million six hundred and nienty-four thousand three hundred and six francs.

The value of the trademark is arrived at as appears from the figures above set forth:

$$4\,694\,306 \text{ fr.} \times 10 = 46\,943\,000 \text{ fr.}$$

Forty-six million nine hundred and forty-three thousand francs.

We think that the value of the business so arrived
1697 at should be reduced by four-sevenths of such amount, on account of the uncertainty of possession (especially if the business of the grantee has to be transferred abroad) viz:

$$\frac{46\,943\,000 \text{ x}}{7} = 20118\,429 \text{ fr.}$$

Twenty million one hundred and eighteen thousand four hundred and twenty-nine francs.

On the other hand, in addition to the expenses and costs which are absolutely indispensable from a commercial point of view, there are others which
1698 concern more particularly Father Rey in his capacity as Procuror of Grande Chartreuse, which his predecessor left him to pay and which have been paid by the owner of the factory for so many years that they constitute, in the eyes of the population and of those who enjoy the benefit of the same, a veritable right.

We refer to the gifts, alms, and different subventions, etc. * * * the suppression of which would be likely to shortly bring about a dangerous state of mind and a threatening agitation.

The detail of these expenses was given us, upon

our request, by Father Rey; they are as follows and none of the items appeared to us exaggerated. 1699

1. Maintenance of St. Bruno's Hospital at Saint Laurent du Pont..... 88.900.fr.
(See for the detail of this sum Father Rey's letter)

Brought forward 88.900

It is also advisable to add to this sum one thousand and thirteen francs 64 centimes for taxes which the Chartreux monk, owner of the buildings, pays in his own name, although they ought really to be paid by Father Rey, but as these Fr. 1.013 fr. 64 are included in 1700 the taxes already deducted from the profits of the factory, the result is the same, and we shall not take this sum into account here.

2. Annual sum for the purpose of a sinking-fund for the building which cost Fr. 1.250.000 viz., five per cent. or sixty-two thousand five hundred francs 62.500.

3. Keeping up the Hospital for the Deaf and Dumb at Currière, annual expense ..... 70,000.

4. Subvention for Hospital of Entre-deux-Guiers 13.000. 1701

5. Subvention for the Hospital at Voiron ..... 7.000.

6. Annual gifts for fires, inundations, (in 1897 this figure was very much higher) ..... 60.000.

7. Sums for the parishes, keeping in repair of public monuments, roads, fountains, etc. 500.000

The other items of the statement of Father Rey relating to expenses of a private nature or of a religious char-

1702 acter, we have not thought it advisable to take the same into account.....

Total ..... Frs. 801.400.

Eight hundred one thousand four hundred francs.

But as stated above (Sec. 2 A. page 15) this method only gave us the amounts which *must have* been produced in 1897 by the outgoing goods, and the result could differ in a certain measure from the books of Father Grézier. Such result was only worth anything in the absence of the production of the books of *the vendor* which we had no right to
1703 ask for.

On the 24th of January, 1899, in the course of an interview between Father Rey, Mr. Joly and the experts, Father Rey produced the book of Father Grézier, from which was taken the total figure of Fr. 7.160.000 for receipts, as also the detail of such receipts and of the expenses, and upon our remarking that such figure did not tally with the information furnished by the "Régie," he pointed out that the difference between the out-going liqueurs and the sales was the result of shipments made to different warehouses in 1897, of goods which were still the property of the sender, Father Grézier and had
1704 not even been included in the sale of the 20th of November, 1897.

When Father Rey was asked to state this precisely and to give the shipments *made in 1897*, he added that he could not give an absolutely accurate figure, but that in any event, the following quantities were in warehouses on the 1st of January, 1898:

Southampton	10.000	cases of	twelve litres.
Bercy	10.000	"	"
Marseilles	6.000	"	"
Lyons	3.000	"	"
Geneva	2.000	"	"
Bordeaux	3.000	"	"
Havre	1.500	"	"

1705

in all thirty-five thousand five hundred cases or four hundred and twenty-six thousand litres of liqueur.

Such quantity represents more than the difference between the number of bottles sold and the number of bottles shipped from the monastery, but the excess could be due to shipments made prior to the year 1897. We have admitted this. 1706

We thereafter examined the books spontaneously offered us for inspection by Father Rey; we have taken therefrom the following figures:

Summing up:

Receipts of Grande Chartreuse	98.950,10	7.160.350,75
Receipts for the liqueur	7.061.400,65	
Expenses of Grande Chartreuse	1.873.621,65	6.020.646,55
Expenses for the liqueur	4.147.024,90	

Finally, Father Rey pointed out: 1707

1. That the price of one hundred and sixty-five francs per hectolitre of alcohol, indicated by him in his letter of the fifteenth of January, 1899, was too low, in that it represents the gross price of alcohol at eighty-six degrees, but if one took into account the loss resulting from the manipulation and from waste, such price ought to be raised to one hundred and eighty francs per eighty-six degrees, that is to say two hundred and nine francs and thirty centimes per hectolitre of pure alcohol.

1708 2. That the sum of sixty thousand francs for lawsuits and advertisements was not the average spent, that he accepted the figure of one hundred thousand francs as a minimum, and furnished us with proof to such effect.

Taking these figures as a basis (and it does not seem to us that they can be contradicted) we have for the receipts of the products of the distillery..... 7.061.400,65

(There is no occasion to take into account the receipts obtained at Grande Chartreuse which represent sums given by strangers passing
1709 through the convent for food, lodging, gifts, etc.)

The detail of such sum is as follows, according to Father Rey's statement:

Sale of liqueurs.....	6.560.000.	
Sale of elixir	500.000.	
Sale of specific for the teeth.....	1.400,65 =	7.061.400,65
Total	7.061.400,65	7.061.400,65

1710 It is hardly necessary to add (as said above Sec. 2 B.) that it is from the figure of the sales that the quantity of alcohol to be included in the cost of manufacture, should be calculated, for if we admit that all the liqueurs which left the factory are not necessarily sold, we must also admit that all the alcohol which *entered* the factory was not employed for the sales of the year, and the sum of one million five hundred thousand francs for purchase of alcohol for 1897 can only be accepted for the quantity of alcohol employed.

At six francs per litre, a total of six million five hundred and sixty thousand francs corresponds to one million ninety-three thousand three hundred

and thirty-three litres at forty-three degrees, or four thousand seven hundred and one hectolitres thirty-three litres of pure alcohol 4.701,33. 1711

And five hundred thousand francs of elixir at thirty francs a litre gives sixteen thousand six hundred and sixty-six litres at sixty-eight degrees, or one hundred and thirteen hectolitres and thirty-three litres of pure alcohol..... 4,701,33 113,33

Total 4.814,66

or a total of four thousand eight hundred and fourteen hectolitres sixty-six litres of pure alcohol, at two hundred nine francs and thirty centimes per hectolitre, which makes the expense about one million seven thousand seven hundred francs, instead of the figure of Fr.1.530.000 given by Father Rey 1.007.700. 1712

Adding to this first total the other items for expenses already detailed and examined in connection with this work, to wit: ....

2. Commissions to representatives.	1.440.000.—	
3. Sugar	370.000.—	
4. Bottles	297.000.—	
5. Corks, labels	52.000.—	1713
6. Aromas, drugs	90.000.—	
7-9. Taxes	39.257.—	
8. Carriage on alcohol, money returned	25.000.—	
10. Keeping the material in repair	18.000.—	
11. Coal	6.500.—	
12. Staff at Fourvoirie	180.000.—	
13. Infringements, advertising	100.000.—	

(The sum of Fr.210.000 spent in 1897 includes an indemnity of Fr. 150.000 paid to the Meunier family,

1714 and cannot be taken into account for an average year)

14. Leases of warehouse in France and abroad	21.000.—
15. Carriage to warehouses	21.500.—
16. Presents, January 1st	14.000.—
17. Pensions for workmen.....	4.500.—
18. Divers expenses.....	10.000.—
Total.....	3.696.457.—
Interest on working capital.....	125.000.—
Making the total expenses.....	3.821.457.—

1715 Three million eight hundred and twenty-one thousand four hundred and fifty-seven francs.

Total receipts....	7.061.400.—
which must be increased by the reimbursements effected by the Customs on the exportation of sugar, not included in the receipts for the liqueur	35.000.—
Total receipts——	7.096.400.—

Seven million ninety-six thousand four hundred francs.

1716

Receipts	7.086.400.—	3.274.943.—
Expenses	3.821.457.—	

There remains therefore for net receipts three millions two hundred and seventy-four thousand nine hundred and forty-three francs.

From the arguments contained in page 53, we have:

$$3.274.943. \times 10 = 32.749.430.$$

To be deducted:

1. On account of the uncertainty of the position of Father Rey at Frande Chartreuse

1717

$\frac{32.749.430 \times 3}{7} = 14.035.470.-$

2. For the capital representing obligatory gifts: 8.014.000.- } 22.049 470.-

Remains..... 10.699.960.

Ten million six hundred and ninety-nine thousand nine hundred and sixty francs.

It appears from this that the value of the mark is in round figures Ten million four hundred thousand francs (the difference representing approximately the costs on the purchase of the business to be borne by the grantee)

1718

Such is our report for which we ask our fees, for correspondence, examination of documents, taking oaths different expensive enquiries, access of places, taking of plans, hearing the parties drawing up the minute of the report copying the same and filing it, independently from our travelling and correspondence expenses, disbursements for registration duties, and stamp paper for the report.

The undersigned expert wishes to add, moreover, that the long intricate and difficult enquiries he has had to make in the course of the examination made by him have given him considerable work, and in order to justify his fees, he holds at the disposition of whoever is entitled to the same, the accessory work and the documents which he did not incorporate in the present report in order to make the same shorter and more to the point.

1719

Made at Grenoble on the fifteenth day of February one thousand eight hundred and ninety-nine.

Signed: DOURNON.

1720

Defendant's Exhibit No. 21.

TRANSLATION

EXTRACT FROM THE RECORDS OF THE COURT OF CASSATION.

At a public hearing before the "Chambre des Requêtes" of the Court of Cassation, at the Palace of Justice, Paris, on the thirty-first day of July 1906,

Of the appeal of Mr. Marius Celestin Rey, priest,
1721 ex-procureur of the dissolved Congregation of Carthusian Monks, domiciled at Fourvoirie, Commune of Saint-Laurent-du-Pont (Isere) at present residing at Calle Fontrodone, Barcelona (Spain), from a decision rendered by the Court of Appeals of Grenoble on the nineteenth day of July, 1905, in favour of:

Mr. Henri Lecouturier, judicial Administrator of the Civil Tribunal of the Seine, residing at 28 rue du Mont-Thabor, Paris, in his capacity of judicial Liquidator and Administrator-Receiver of the dissolved Congregation of Carthusian Monks, appointed to these functions by a judgment of the Civil
1722 Tribunal of Grenoble of the thirty-first day of March, 1903,

The following decision has been rendered:

THE COURT

After having heard the report of Counsellor Letellier, the pleadings of Maître de Ramel, avocat, and the argument of the Advocate-general Mr. Bonnet,

On the first exception raised as to the violation of Article 3 of the Civil Code, the false application of Articles 17 and 18 of the law of the 1st of July, 1901 and the violation of Article 7 of the law of the 20th of April, 1810:

Whereas by a document filed at the office of the Clerk of the Court on the 3rd day of April, 1906, the attorney for the party appealing has declared that he withdraws said exception. 1723

On the second exception raised as to the violation of Article 423 of the Penal Code, Articles 1st and following of the law of the 27th of March, 1851, Articles 7 & 8 of the law of the 23rd of June 1857, and Article 7 of the law of the 20th of April, 1810:

Whereas in the Court of First Instance as also in the Court of Appeals, the arguments bore exclusively upon the question as to whether the business of the Carthusian Monks, together with the appurtenances thereof, should be retained by the Abbé Rey in virtue of the deed of the 20th of November, 1897, or whether they should be attributed to the Liquidator of the dissolved Congregation; 1724

Whereas at no time have the Courts been called upon to determine the conditions of the exploitation of said business, or the question whether said business could be carried on without misleading third parties as to the nature and quality of the products thereof; whereas the exception as to an anticipated infringement of Article 423 of the Penal Code and of the provisions of the law of the 23rd of June, 1857, is raised for the first time and is therefore inadmissible. 1725

THEREFORE

Dismisses the appeal and orders the plaintiff to pay costs.

At the foot of the Minute of the foregoing decision is written:

Registered at Paris, this 8th day of August, 1906, Folio 95, Case 19, Received thirty-seven francs fifty centimes; decimes, nine francs thirty-eight centimes.

signed: CHABROL

1726

Defendant's Exhibit No. 22.

TRANSLATION

EXTRACT FROM THE RECORDS OF THE COURT OF CASSATION.

At a public hearing before the "Chambre des Requêtes" of the Court of Cassation, at the Palace of Justice, Paris, on the thirty-first day of July 1906,

Of the appeal of Mr. Gervais Garnier, chemist,
1727 domiciled at 169 Boulevard Pereire, Paris, but at present residing at Siaugues Saint Romain (Haute Loire),

From a decision rendered by the Court of Appeals of Grenoble on the 19th day of July, 1905, in favour of:

Mr. Henri Lecouturier, judicial Administrator of the Civil Tribunal of the Seine, residing at 28 rue du Mont-Thabor, Paris, in his capacity of judicial Liquidator and Administrator-Receiver of the dissolved Congregation of Carthusian Monks,

The following decision has been rendered:

THE COURT

1728 After having heard the report of Counsellor Letellier, the pleadings of Maître Bickart-See, avocat, and the argument of the Advocate-general Mr. Bonnet,

On the sole exception raised as to the violation of Article 1st of the law of July 23rd, August 4th, 1884 Articles 1st and following of the law of June 23rd, 1857, Article 18 of the law of July 1st, 1901, and Article 7 of the law of April 20th, 1810:

Whereas inasmuch as the right of the plaintiff in the present appeal, to the commercial and industrial use of the family name of Garnier, is recog-

1412

nized by the decision attacked, upon the sole condition that he shall abstain from all imitation, and all unfair or illegal competition in so far as Mr. Lecouturier is concerned, the appeal on this point presents no interest. 1729

As regards the trademark specialized by the name and signature "L. Garnier" affixed to the labels of the products of the Grande Chartreuse:

Whereas in fact the decision attacked declares, on the one hand, that the name and signature "Louis Garnier" have been commercialized and form part of the Chartreuse trademark, and have from long use become an integral part thereof; and on the other hand, that the mark is an accessory of the business the products of which it guarantees; 1730

Whereas in deciding, further, that the aforesaid mark which, together with its essential elements, was transferred in 1871 to a person interposed on behalf of another person who himself was the proprietor thereof in appearance only, was properly detained by the Congregation of Carthusian Monks and formed part of the assets to be liquidated, the Court of Grenoble, far from violating the provisions of the law hereinabove mentioned, did on the contrary strictly apply said provisions.

THEREFORE 1731

Dismiss the petition and ordes the plaintiff to pay costs.

In the margin of the minute of the foregoing decision is written:

Registered at Paris, this third day of August, 1906, Folio 90, Case 18. Received 37 francs 50 centimes, decimes nine francs thirty-eight centimes.

signed: CHABROL

1732 A true copy, made and compared on this 17th day of November 1906.

The Chief Clerk of the Court of Cassn.

signed: GIRODON

(Follow the usual legalizations).

Defendant's Exhibit—Defendant's Proposed Circular.

CUSENIER COMPANY

110 Broad Street

1733 New York Jul. 6, 1907.

CHARTREUSE

We are now prepared to offer you under the old and well known trademarks, "CHARTREUSE," not made by the monks but by the successors to the business at the old monastery of LA GRANDE CHARTREUSE located at Voiron, near St. Laurent du Pont, France, where the aromatic plants, which give CHARTREUSE its characteristic flavor, are gathered.

After the congregation of Carthusian Monks was dissolved, the French Government put this property and the CHARTREUSE business at LA GRANDE CHARTREUSE in the hands of a Receiver or Liquidator, Mr. Henri Lecouturier, under whose direction the business of making CHARTREUSE was continued in 1904-1906.

1734

In 1906 the Liquidator under the direction of the French Court, transferred the business, trademarks and property to La Compagnie Fermiere de La Grande Chartreuse, organized with a capital of 3,000,000 Francs to carry on the manufacture of CHARTREUSE at the monastery and the CHARTREUSE now made by the Company is being sold not only in France, but in almost all other countries.

We have for immediate delivery a special lot of 1735
CHARTREUSE more than two years old, made under the direction of the Liquidator or representative of the French Government.

Hoping to be favored with your valued orders for same, we remain,

Your very truly,

CUSENIER COMPANY

By Jules Aubry

Vice Pres.

Defendant's Exhibit No. 24. 1736
Judgment Roll.

TRANSLATION.

Extract of the minutes of the Clerk of the Civil Tribunal of First instance of the district of Grenoble, Isère, Republic of France. In the name of the people of the Republic of France. The First Chamber of the Civil Tribunal of first instance of the district of Grenoble, Isère, rendered at a public hearing held on the 18th of May 1905, a judgment the tenor of which follows the statement of the parties to the case hereinafter set forth. *Statement.* 1737

Between the Union Agricola, a "société anonyme" whose principal place of business is at Barcelona. 13 Rue Oucha, at the request of Mr. Alphonse Daumas de Focca, a lawyer, domiciled at Barcelona, President of the Board of Directors and manager, plaintiff, by a writ served on the 11th of July, 1904, Mr. Novel being said Company's avouè, on the one part, and Mr. Henri Lecouturier, Judicial Administrator of the Civil Tribunal of the Seine, residing in Paris, 28 Rue du Mont Thabor, acting in his capacity as administrator receiver and liquidator

1738 of the property of the Congregation of Carthusian Monks, appointed to such functions by a judgment of the Tribunal Civil of Grenoble dated the 31st of March, 1903, Mr. Guignier being Mr. Lecouturier's avouè, on the other part. And between Mr. Henri Lecouturier, above mentioned, plaintiff, by writs served on the 15th, 16th, 18th, 21st, 29th July, 2nd, 18th and 19th of August, 1904, Mr. Guignier being Mr. Lecouturier's avouè, on the one part. And the above mentioned company, L'Union Agricola, defendant as regards the writs served on the 21st and 29th of July and 18th of August, 1904, Mr. Novel being said Company's avouè.

1739 2. Mr. Joseph Durran, residing at Cerbère (Pyrénées Orientales) acting in his capacity as liquidator of the firm of Felix Arras, Customs Agents of Cerbère.

3. Mr. Jean Arras, a priest, residing at Cerbère, in his, capacity as guardian to Miss Arras daughter of Mr. Felix Arras, deceased, the two latter being defendants as regards the writs of the 21st of July and 2nd of August, 1904, Mr. Novel being their avouè.

4. Mr. Henri Durand, a merchant residing at Marseilles, defendant as regards the writ of the

1740 15th of July, 1904, Mr. Esprit being his avouè.

5. Messrs. Audier Brothers, merchants, residing at Valence, defendants as regards the writ of the 16th of July, 1904, Mr. Esprit being their avouè.

6. The Société Eden Bars whose principal place of business is at Lyons, 217 Avenue de Saxe, represented by Mr. Pitiot, President of the Board of Directors, defendant as regards the writ of the 19th of August, 1904, Mr. Esprit being their avouè.

7. Messrs. Brézun & Co., merchants, formerly residing at Voiron, and now of Marseilles, defendants as regards the writs of the 16th and 18th of

July, 1904, Mr. Jobert being their avouè, on the other part. Mr. Novel, avouè of the Union Agricola argued the case, and Mr. Morin, an advocat, in his pleadings, requested the Court not to examine the arguments of the other side, but to declare null and void the petitions presented to the Justice of the Peace of Céret as well as the record of the seizure, drawn up on the 8th of July and 5th of August, 1904, either on the ground that the petition was presented in the name of an attorney in fact, or on the ground that the record was not handed to the holder; the Court was also requested to declare null and void, under articles 69 and 70 of the Code of Civil Procedure the summons and complaint of the 21st of July, 1904; that the summons and complaint of the 18th of August, 1904, was null and vexatious, the judgment of the 12th of August, 1904, having ordered the vacating of the seizure. 1741 1742

That the mark filed by the Union Agricola constituted neither an infringement nor an imitation of the mark filed by Abbé Rey, which infringement is punished under articles 7 and 8 of the law of the 26th of June, 1857. That article 1 of the law of the 28th of July, 1824, cannot be applied, inasmuch as the Union Agricola does not affix on its products the name of any manufacturer or place not conformable to the truth. That those pleadings in which it is asked that the Union Agricola be declared guilty of unfair or unlawful competition which are not contained in the summons and complaint served in the action brought to test the validity of the seizure, and such as are not a defence to the demand formed for the purpose of asking the nullity of the seizure, are not within the jurisdiction of the Court; that the Court should declare itself without jurisdiction as regards the same. 1743

That Lecouturier be condemned to pay to the

1744 Union Agricola 20,000 francs as damages for the prejudice they have suffered on account of the seizures, and to pay the costs. That in the present case, the question is not one regarding the appointment of a Receiver, or the execution of a judgment, but an action for infringment brought by Lecouturier, as a manufacturer, against another manufacturer; and that the provisional execution of the judgment cannot be asked either under article 135 or in the case of extereme urgency. Mr. Guignier, avouè of Mr. Lecouturier in his said capacity, argued the case, and Mr. Millerand, of the Paris Bar, asked in his pleadings that the Court should declare that
1745 the Union Agricola infringed or at least fraudulently imitated the marks of which Lecouturier is Administrator Receiver; that consequently the seizures affected at his request were valid and founded that the Court should order the confiscation of the seized products. Subsidiarily: that the Union Agricola had usurped a name, under the terms of the law of the 28th of July, 1824. Still more subsidiarily: that the acts of said company constitute unfair competition; that said Company is guilty of unlawful competition; that it be enjoined therefore from making use of the marks and names in question; that it
1746 be condemned to the payment of 30,000 francs as damages, and to the payment of the costs. That the judgment to be rendered be declared provisionally executory, notwithstanding opposition or appeal and without asking for a bond. That the Union Agricola be non-suited as regards all their demands, conclusions and pleadings; that the Court should recognize that Lecouturier makes all reservations as regards actions to be brought against all agents and accomplices of the Union Agricola. Mr. Novel avouè of Mr. Joseph Durrande and of Mr. Jean Arras in their said capacity asked in his pleadings

that the Court should recognize the declarations of 1747
the above named of their intention to accept the decision of the Court; that the proper party be made to pay the costs. Mr. Esprit, avouè of Mr. Henri Durand argued the case and Mr. Chabrand, advocat, asked in his pleadings that the Court, without examining any of the arguments of the other side, should state that the seizure of the 2nd and 4th of July, 1904, was null as having been made by virtue of a general order which stated neither the places, nor the persons, and was therefore of no value, as far as it was based on the law of 1824; that such seizure was effected without any 1748
right whatever; that it be declared, in consequence, null and void both as regards the form and the merits.

That the demands and pleadings contained in the summons and complaint of the 15th of July, 1904, be declared irreceivable and unfounded, as also those filed with this summons and complaint. That the pleadings asking that Durand be condemned on the ground of unfair and unlawful competition which are not contained in the summons and complaint served on him, are not within the jurisdiction of the Civil Tribunal; that the Court should declare itself without jurisdiction. Counter-demand: that Lecou- 1749
turier be condemned in his said capacity to pay to Durand the sum of 10,000 francs as damages for the prejudice which he has suffered on account of the seizures and of the proceedings taken against him. That he be condemned to pay the costs, a part of the same to be given to Mr. Esprit, avouè, on his statement that he is entitled thereto. Under express reservations as regards all rights and actions against the plaintiff and all other persons (if need be) and under the reservation also to modify and add to the presents. Mr. Esprit avouè of Messrs.

1750 Audier Brothers argued the case, and Mr. Chabrand, advocat, asked in his pleadings that the Court, without examining any of the arguments of the other side, should state that the seizure of the 8th of July, 1904, was null and so far as it was based on the law of 1824; that it was effected without any right whatever; that the Court should declare that such seizure was null both as to the form and the merits. That the Company Audier Brothers, having had nothing to do with the dealings complained of by the plaintiff—Victor Audier alone being the purchaser and addressee of the goods seized—should
1751 not be regarded any longer as parties to the proceedings. That all demands and pleadings contained in the summons and complaint of the 16th of July, 1904, are irreceivable and unfounded, as also those filed in accordance with such summons and complaint. That the pleadings asking that Audier be condemned on the ground of unfair and unlawful competition, which are not contained in the summons and complaint are not within the jurisdiction of the Civil Tribunal; that the Court should declare itself without jurisdiction as regards the same. Counterdemand: That Lecouturier in his capacity be condemned to pay the sum of 10,000
1752 francs to Victor Audier, and to the Company Audier such sum as may be fixed by the Court, for the prejudice occasioned by the seizures and proceedings taken against them. That he be also condemned to pay all the costs, a part of the same being deducted for Mr. Esprit, avouè, upon his statement that he is entitled thereto. Under the express reservations of all rights and actions against the plaintiff and any other person (if need be) as also under the reservation to modify and add to the presents. Mr. Esprit, avouè, of the Eden Bars Company argued the case, and Mr. Chabrand, ad-

vocat, asked in his pleadings that the Court should 1753
declare, without examining any of the arguments of the other side, that the seizure of the 5th of August, 1904, was null as being effected by virtue of a general order without stating any of the places or persons, and was therefore of no value and also as being asked for by a representative of Mr Lecouturier; also on the ground that no copy of the record was handed to the holder; that such seizure was effected without any right whatever; that the Court should declare the same null both as regards the form and the merits. That the Court should state that the summons and complaint of the 19th of August, 1904, is null and vexatious, the judgment of 1754
the 12th of the same month having ordered the vacating of the seizure. That all demands and pleadings in the summons and complaint in question be declared irreceivable and unfounded, as also those filed in accordance with such summons and complaint. That the pleadings asking for the condemnation of the Eden Bars Company on the ground of unfair and unlawful competition, which are not included in the summons and complaint, and are not within the jurisdiction of the Civil Tribunal; that the Court should declare itself without jurisdiction as regards the same. Counter-demand: that Lecou- 1755
turier be condemned to pay to the defendant the sum of 5,000 francs as damages for the prejudice occasioned by the seizures and proceedings taken against said Company; that Lecouturier be condemned to pay the costs, including those connected with the case brought before a judge sitting in Chambers, a part of the same to be paid to Mr. Esprit, avouè, upon his statement that he is entitled to the same. Under express reservations of all rights and actions against the plaintiff and any other person (if need be) as also under the reservation

1756 to modify and add to the presents. Mr. Jobert avouè, of Messrs Brézun & Co. in his pleadings asked that the Court should declare, without examining any of the arguments of the other side, that Lecouturier in his said capacity, should be non-suited in his pleadings, his demands being irreceivable and unfounded. That the seizures ("saisies rèelles et descriptives") should be declared null as regards the form and the merits, one of which was effectel at Marseilles on the 2nd, 4th and 6th of July, 1904, and the other at Valence on the 8th of July, same month. Counter-demand, for the prejudice he occasioned Messrs Brézun & Co. by hindering their
1757 business, the Court is requested to condemn Lecouturier to pay them as damages such sum as will be determined upon. That Lecouturier be condemned to pay the costs.

FACTS: Mr Lecouturier, acting in his capacity as Liquidator and Administrator Receiver of the property of the dissolved Congregation of Carthusian Monks, and availing himself:

1. Of a judgment of the Civil Tribunal of Grenoble, dated the 23rd of April, 1904, in which the Court held that the business carried on both at Grande Chartreuse and at Fourvoirie, under the
1758 commercial name of "Liqueurs made at Grande Chartreuse."

2. Of an order rendered by a judge in Chambers (the president of the Civil Tribunal of Grenoble) dated the 17th of May, 1904, authorizing him to take possession of said business—presented to the president of the Civil Tribunal of Marseilles a petition asking for authorization to proceed with the detailed description, with or without seizure, of a certain number of bottles of liqueur shipped from Tarragona to Messrs. Brézun & Company of Marseilles, said bottle bearing the following label on

yellow paper: "Liqueur made at Tarragona by 1759
the Péres Chartreux" which constituted, according to him, a prejudice to the business taken over by the liquidator. and a violation of the provisions of the law of the 28th of July. 1824, and of the 23rd of June, 1857. This petition was answered by an order, under which, and according to writs served by Mr. Delhourme. a process server of Marseilles, on the 2nd, 4th and 6th of July, 1904, registered. which should be referred to for further details, Mr. Lecouturier caused 10 cases containing a certain number of bottles of said liqueur to be seized at the house of Mr. Henri Durand, a mer- 1760
chant of Marseilles. On the other hand and by virtue of an order rendered by the Justice of the Peace of Argelès-sur-Mer, on the 8th of July, 1904. upon the petition presented to him by Michel Cros, avouè. at Perpignan, acting in his capacity as representative of Mr. Henri Lecouturier (as appears from a letter dated from Paris July 6th, 1904). Mr. Lecouturier, according to the statement drawn up by Surgus a process server at Argelès on the 8th of July, 1904, caused the following to be seized at the railway station of Cerbère:

1. Ten cases of the liqueur in question; five
among said cases marked M. T. and bearing the fol- 1761
lowing numbers 469, 470, 471. 472 and 473; 5 others marked E, M. numbered 464, 465. 466, 467 and 468.

2. 400 cases of liqueur marked D. B. 635-1034, said cases having reached Cerbère, being shipped to Messrs. Arras. By a third writ dated the 8th of July, 1904, served by Mr. Cornu, process server at Valence, and by virtue of an order rendered by the President of the Civil Tribunal of said town, Mr. Lecouturier caused ten cases of the above mentioned liqueur which had arrived in France and

1762 were shipped to Messrs. Brèzun & Co. to be seized at the house of Messrs Audier Brothers, merchant, at Valence. It is under these conditions, and by a writ dated the 11th of July. 1904, registered, in which Mr Novel was appointed their avouè. that the Union Agricola stated to Mr. Lecouturier: that according to several statements he had caused to be seized a certain number of cases of liqueur belonging to the company and sold and delivered by them to different purchasers in France. to wit:

1. On the 2nd and 4th of July, 1904, at Marseiles, 10 cases.

1763 2. On the 8th of July, 1904, at Cerbère 410 cases.

3. On the same day at Valence 10 cases.

That Mr. Lecouturier caused said cases to be seized on the ground that the bottles contained in the same bore the following label on yellow paper: "Liqueur made at Tarragona by the Pères Chartreux" and were so marked to the prejudice of the products forming a part of the business formerly carried on by the dissolved congregation of the Carthusian Monks under the commercial name of "Liqueur made at Grande Chartreuse." Mr. Lecouturier being in possession of said business by virtue:

1764 1. Of a judgment rendered by the Tribunal of Grenoble of the 23rd of April, 1904.

2. Of an order rendered by the President of said Tribunal, sitting in Chambers, on the 17th of May following; that from information obtained by the representatives of the company, it appears that neither the judgment nor the order rendered by a judge sitting in Chambers on which Mr. Lecouturier based his demand had acquired *res judicata* that moreover the order of the 17th of May, 1904 was appealed from, and could not be executed provisionally; that therefore Mr. Lecouturier was not entitled to act.

That the Union Agricola was the owner, as appears from regular records, of the trademark affixed on the products seized. That it could not be seriously maintained that the liqueur sold by the Company, and which had been seiezd, as above stated, constituted on the part of said Company an imitation of tht old liqueur made at Grade Chartreuse That said liqueur was offered for sale to a public under a mark which could not bring about any confusion in the mind of the purchaser between such product and the product which is a part of the business which Mr. Lecouturier claims to be in possession of. That a mere comparison between the two marks was sufficient to show that Mr. Lecouturier's claim was unfounded, and that it was evident that there was neither an infringement of the mark or a usurpation of the name on the part of the Company. That by so acting, Mr. Lecouturier did serious harm to the Union Agricola, for which the latter was anxious to obtain reparation. And by said writs, Mr. Lecouturier was summoned to appear, within the delay provided for by law, before the Civil Tribunal of Grenoble, so that the Court might declare that it was without any right whatever that he had caused to be seized the liqueur in question, either on the ground that he was not entitled to act, or that the liqueur so seized did not constitute an imitation of the old liqueur made at Grande Chartreuse, or a usurpation of the name. That in consequence the vacating of the said seizures be ordered and that the said company be allowed the free use of the goods so seized, said Lecouturier to be enjoined from thereafter troubling said Company in their free disposal and enjoyment of the marks of which they are the owners. That Mr. Lecouturier be condemned to pay.

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1768 1. A sum of 20,000 francs as damages to the company for the prejudice caused.

2. A sum of 1,000 francs for each day's delay in vacating the seizure. That said Lecouturier be also condemned to pay the costs in connection with said summons and complaint. Mr. Guignier represented Mr. Lecouturier and a first issue was thus joined by the parties before the Court. On the other hand, Mr. Lecouturier, following on the seizures in question, joined before the Court the following issues:

1. By two writs dated the 15th and 16th of July
1769 1904, registered, in which Mr. Guignier was appointed his avoué, he caused to appear before the Court Mr. Henri Durand and Messrs. Brézum & Company, for the purpose, as appears in the summons and complaints, of requesting the Court to declare that the seizure in question was regular in its form and justified as to the merits, (to wit, the seizure of the 2nd and 4th of July 1904 made at the house of Mr. Durand of Marseilles); that they have been guilty of usurping, infringing, fraudulently imitating or affixing the mark of which Mr. Lecouturier is Administrator Receiver, by using said marks for the above
1770 mentioned products; that they be jointly condemned to pay any damages which may be determined upon, that the articles so seized be confiscated, and that the judgment to be rendered be inserted in all newspapers, at the plaintiff's choice; that they be also jointly condemned to the payment of the costs, under all reservations on the subject of all further demands against Mr. Henri Durand and Messrs. Brézun & Company or others. Mr. Esprit was chosen as Mr. Durand's avoué and Mr. Jobert as Messrs. Brézun & Co's avoué.

2. By two writs dated the 16th and 18th of July 1771
1904, in which Mr. Guignier was appointed Mr. Lecouturier's avoué, the latter caused to appear before the Court Messrs. Audier Brothers merchants of Valence and Messrs. Brézun & Co., the pleadings of Lecouturier being identical with those filed in the action against Mr. Durand and Messrs. Brézun & Co. and above set forth. Mr. Esprit acted as Messrs. Audier Brothers' avoué and Mr. Jobert as Messrs. Brèzun & Co's avouè

3. By a writ dated the 21st of July 1904, registered, in which Mr. Guignier acted as Mr. Lecouturier's avoué, Mr. Lecouturier declared:

2. To the firm of Felix Arras, Customs agents 1772
at Cerbère, and for such firm to Mr. Joseph Durrande, taken in his capacity as Liquidator of the firm of Felix Arras.

3. To Mr. Jean Arras, a priest at Cerbère, taken in his capacity as guardian to Mlle Arras. That it appeared from the record of the seizure (that made by Surgus, a process server of Argeles sur Mer on the 8th of July, 1904) that the Union Agricola had shipped to Mr. Arras, agent, the cases of liqueur set forth in said record. That such cases contained products on which were affixed certain marks, a description of which was also contained in 1773
said record; that such marks constituted infringements and fraudulent imitations, which had been fraudulently affixed on said products and bore indications of a nature likely to deceive the purchaser. That moreover the defendants also violated article first of the law of the 28th of July 1824; that under these circumstances, the record of the seizure in question was regular in its form and justified as to the merits. That under the sole article of the law of the 23rd of July 1903, the Civil Tribunal of Grenoble had jurisdiction. And

1774 by the same writ, a summons and complaint was served on the Union Agricola, Mr. Durrande in his said capacity, and Mr. Arras in his said capacity, to appear within the delay fixed by law, so that the Court might declare the seizure to be regular as regards the form and justified as regards the merits. That the Court also declare that said defendants were guilty of usurpation, infringement, fraudulent imitation or fraudulent use of the marks belonging to the plaintiff, by using said marks in connection with the above mentioned products. That the Court should condemn
1775 said defendants to pay any damages to be determined upon; that the article so seized be confiscated, and that the judgment to be rendered be inserted in any newspapers, at the plaintiff's choice. Under all reservations as regards all other demands or pleadings to be presented either against the defendants or against others. Mr. Novel acted as the avoué of the defendants. August 4th 1904. The Union Agricola joined before the Court an incidental demand to his principal demand, in which they asked that the seizures made by Lecouturier be limited to the samples which it was necessary to have for the preliminary investiga-
1776 tion of the pending cases. On the 12th of August 1904, a judgment was thereupon rendered, the "dispositif" of which reads as follows: NOW THEREFORE: The Court, after having deliberated in accordance with the law, and after having heard Mr. Novel, avoué, and Mr. Morin, avocat for the plaintiff, Mr. Guignier, avoué for the defendant, and Mr. Chaudet, representative of the Public Prosecutor in his pleadings, the hearing being one in the first instance, and the case being tried provisionally on account of urgency, the rights and arguments of all parties being reserved,

the Court officially recognized Lecouturier's offer 1777
and the declaration made by the Union Agricola to the effect that said Company provisionally agrees, under reservation of all their rights whether as to procedure or as to the merits, that the goods seized on the 8th of July 1904 at Cerbère shall remain so seized, under the condition, however, that no seizure shall be effected on any goods subsequently shipped or hereafter to be shipped, and that the Union Agricola shall have the entire and free disposition of the same, until the Court shall have passed in such matters as are now pending before it. Consequently, the Court authorizes the Union Agricola to immediately take 1778
possession, either personally or through the intermediary of their representatives, and more particularly through Mr. Joseph Durrande, Customs agent at Cerbère of all goods confiscated prior to the 8th of July 1904, although the same may have been confiscated manu militari; the Court decrees that such Company and its agents shall be at liberty to dispose of all goods shipped into France; that the present judgment shall be provisionally executed prior to registration and without any bond being furnished, notwithstanding any opposition or appeal; the Court reserves the question 1779
of costs. According to a writ served on the 2nd of August 1904, Mr. Lecouturier acting in his said capacity caused to be summoned to appear before the President of the Court, sitting in Chambers:

1. The Union Agricola.

2. Joseph Durande.

3. Mr. Jean Arras in his said capacity; for the purpose of asking the Court to hold, as a provisional and urgent measure, that the 410 cases seized at Cerbère be withdrawn from the railway station of such locality and shipped to the ad-

1780 dress of such party as shall be named by the President of the Court, or else to Messrs. Bellet and Seigle, carters, to whom all necessary powers shall be given to give a regular discharge, both to the Southern Railway Company or to the station master, and to Mr. Orpy, Receiver, the new consignee or consignees to take the place with regard thereto, of the Southern Railway Company and of the Receiver, Mr. Lecouturier to advance ware house expenses and the expenses of the Receiver to be reimbursed to the Railway Company or to Mr. Orpy, as also carriage expenses from Cerbère to
1781 Grenoble or elsewhere; the costs to be considered as preference storage expenses, and the Order to be rendered to be executed provisionally, notwithstanding opposition or appeal and without any bond being furnished. Following such summons and complaint, and on the 13th of August 1904 the following Order was rendered by a judge sitting in Chambers, the "dispositif" of which is as follows: NOW THEREFORE: We, President, sitting in Chambers, trying the case provisionally on account of the urgency, declare that the 410 cases of liqueur seized on the 8th of July last shall be removed from the railway station of Cerbère
1782 and shipped to Grenoble to Messrs. Bellet and Seigle ,carters of said town, to whom all necessary powers are given in order to give a regular release to the Southern Railway Company or such Railway Company's station master at Cerbère and to Mr. Orpy, Receiver, the new consignees taking the place with regard thereto of the Southern Railway Company and of the Receiver, Lecouturier advancing the storage expenses and those of the Receiver to be reimbursed to the Railway Company or to Mr. Orpy, as also carriage expenses from Cerbère to Grenoble. Adjudges that the

costs are to be considered as preference storage 1783
expenses and that the present Order shall be executed provisionally, notwithsanding opposition or appeal and without any bond being furnished, the rights and arguments of the respective parties being expressly reserved, both as regards the procedure and the merits. Finally, by virtue of an Order rendered by the Justice of the Peace of Argelès-sur-Mer on the 5th of August 1904, upon a petition presented to him by Mr. Modeste Paulo, of no occupation, residing at Argelès-sur-Mer, acting as the representative of Mr. Henri Lecouturier, under a power of attorney dated Paris August
2nd 1904, Mr. Lecouturier, according to a writ 1784
served on the 5th of August 1904 by Surgus, a process server at Argelès-sur-Mer, caused to be seized, at the railway station of Cebère 25 cases of liqueur addressed to the Manager of the Eden Bars Company, 217 Avenue de Saxe, Lyons. By writs served on the 18 and 19th of August 1904, to which reference is made, and in which Mr. Guignier is chosen by Mr. Lecouturier as his avoué, the latter caused the Union Agricola and the Eden Bars Company to appear before the Civil Tribunal of Grenoble, the pleadings being absolutely identical with those already filed by Lecouturier 1785
in the actions to which refrence is made above. Mr. Esprit acted as the Eden Bars Company's avoué and Mr. Novel as the avoué of the Union Agricola, and this new issue was thus joined by the parties before the Court. It is under these circumstances that such cases were put on the calendar, to be tried by the First Chamber; the pleadings of both sides were regularly served, and the cases were called at different hearings in the course of which the pleadings above set forth were filed and developed by the avoués and avocats of

1786 the respective parties. The Public Prosecutor was heard and those cases which had been adjourned for deliberation were tried at the hearing held to-day for the rendering of the judgment. As to the law: What should the Court adjudge and decree as to the respective pleadings of the parties? As to expenses? Signed: Novel, avoué. In the margin of the statement of the parties to the case appears: In the year 1905, on the 26th of May, at the request of Mr. Novel, avouè a copy of said statement was served on Messrs. Guignier, Esprit and Jobert, all avoués of the Court:

1787 1. As regards Mr. Guignier, the copy was served personally on him; as regards Mr. Esprit and Mr. Jobert, the copy was also served personally on them. Cost 90 centimes. Signed: Gauthier, process server of the Court. We President, maintain the present statement of the parties to the case, in default against Messrs. Guignier, Jobert and Esprit. At the Court House of Grenoble, June 3rd 1905. The President. Signed: RABATEL.

Whereas by a deed executed upon the 20th day of November, 1897, at the office of Mr. Sourd, a notary at Saint-Pierre-de-Chartreuse, Gabriel Al-
1788 fred Grézier, Procuror of the Convent of Grande Chartreuse, transferred to Marius-Célestin Rey, the business of manufacturing the liqueurs, elixirs and other products, carried on at Grande Chartreuse and at Fourvoirie, under the commercial name of "Liqueur fabriquée à la Grande Chartreuse, elixir végétal de la Grande Chartreuse ou de produits de la Grande Chartreuse", said business consisting of: 1. The clientelage and connexion of the same; 2. the ownership of the trademarks and commercial names which serve to identify the products as also the model of the bottles, flasks, boxes and cases in which such products are

1432

contained; 3. The exclusive right to the industrial 1789
and commercial use of the name Garnier; 4. the rights arising out of any transfer, authorization and conveyance consented to by said L. Garnier in favor of Grézier, according to a deed executed before the same notary on the 9th of December, 1871; 5. the right to declare oneself sole successor of Grézier, and therefore of Louis Garnier; 6. every form of industrial ownership, such as was had and publicly enjoyed by the vendor, together with the benefit of the judgments and decisions which have confirmed the same; 7. the furniture and utensils used in the business; 8. lastly, the goods, primary ingredients, manufactured products and accessories of all kinds to be found in the warehouses and cellars of Grande Charatreuse and Fourvoirie; 1790
whereas, since such date, Abbé Rey, who was Procuror of the Convent of Grande Chartreuse, offered to the public products or liqueurs of Grande Chartreuse, made at Fourvoirie, according to the processes of the Chartreux monks.

Whereas after the passing of the law of the 1st of July, 1901, which dissolved non-authorized Congregations and gave them a delay of three months within which to obtain authorisation, the Congregation of Carthusian Monks applied for authorisation, but authorisation was refused them by the 1791
Chamber of Deputies at their sitting of the 28th of March, 1903, and Lecouturier was appointed Administrator Receiver and Liquidator of the property of said Congregation, by a judgment of this Court, dated the 31st of March, same year;

Whereas in the action brought by the Liquidator against Abbé Rey, owner of the marks of Grande Chartreuse, to have the latter declared "personne interposée" of the Order of Carthusian Monks, the Court rendered on the 23rd of April, 1904, a judgment in which it held that the business of manufacturing liqueurs, elixirs and other products, car-

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1792 ried on both at Grande Chartreuse and at Fourvoirie, under the commercial name of "Liqueur fabriquée à la Grande Chartreuse, Elixir végétal de la Grande Chartreuse, produits de la Grande Chartreuse", including the clientelage, connexion, ownership of the trademark and commercial names which serve to identify such products, as also the model of the bottles, flasks, boxes and cases in which such products are contained; the exclusive right to the industrial and commercial use of the name of L. Garnier, the furniture, and utensils of all kinds used in the business; the goods, primary ingredients, manufactured products
1793 to be found in the warehouses, cellars and storehouses, as also all appurtenances and dependencies whatsoever of such business, sold on the 20th of November 1897, are really the property of the Order of Carthusian Monks, such deed being null as having been executed in favor of Rey, a member of the Order, whom the liquidator, by weighty, precise and concordant presumptions, has proved to be a "personne interposée" of the Chartreux; therefore said business, together with its accessories, including the trademark, is property held by the Congregation as set forth in articles 18 and 13 of the law of the 1st of July, 1901, and is part
1794 of the assets of the Receivership.

Whereas by an Order of the 17th day of May, 1904, rendered in Chambers, Lecouturier was authorised, as a provisional and urgent measure, without prejudging the matter, in his capacity as Administrator Receiver of the Order of Carthusian Monks, to take effectual possession, by virtue of article 18 of said law, of the factory at Fourvoirie, as also the business carried on there, with its dependencies; and after said Order was rendered the Liquidator took possession of said factory, and Abbé Rey was compelled to leave the same, in May 1904;

Whereas the judgment of the 23rd of April 1904 1795
and the Order of the 17th of May were appealed from by Abbé Rey, and the issues joined on such appeals are still pending before the Court;

Whereas the Chartreux were expelled from the Convent of Grande Chartreuse on the 29th of April 1903, some of them taking refuge at Pignerol, others at Tarragona; whereas on the 6th of February, 1904, an agreement was entered into between Father Baglin, in religion known as Dom Michel, Superior General of the Chartreux, acting in such capacity and as the representative of each of the members of such Order, and "La Union Agricola", 1796
a Spanish 'société anonyme' of Tiana, in the province of Barcelona, which was organized on the 27th of December, 1901, represented by Mr. Daumas de Foxa, General Manager. In such agreement it was stipulated as follows:

1. Baglin, in his capacity as Superior General of the Chartreux, grants to "La Union Agricola" the exclusive commercial exploitation of the industrial products used in the manufacture of the liqueurs, elixirs and products of Grande Chartreuse;

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2. The manufacture will be carried on at the factory of "La Union Agricola" at Tarragona, for said Company's account and at their risk;

3. Inasmuch as the processes employed constitute secrets of manufacture, "La Union Agricola" agrees only to employ such workmen as will be furnished by the Father General of the Chartreux, and such workmen shall be under the orders of one or more Fathers chosen by the Father General amongst the members of the Order;

4. Baglin or his representatives shall deliver to "La Union Agricola", in the factory itself, the products manufactured by them, at a price to be stated in the agreement;

5. The present agreement is made for twelve years, from the 1st of February, 1904, and may be tacitly renewed by the mere fact of the parties continuing to adhere to its terms;

Whereas in order to exploit the monopoly so given to it, "La Union Agricola" filed in Spain, France and abroad a trademark bearing the following words: "Liqueur made at Tarragona by the Pères Chartreux" as appears from the regular certificates of filing delivered in Spain in April and June of 1904.

Whereas on the 2nd of July ,1904, Lecouturier caused to be presented to the President of the Civil Tribunal of Marseilles a petition with a view to obtaining authorisation to seize the cases of liqueur bearing said mark, by virtue of article first of the law of the 28th of July, 1824, and of article 17 of the law of the 23rd of June, 1857; whereas an order to this end was rendered upon such petition, and 10 cases were seized in the hands of Durand, a merchant of Marseilles, the consignee; whereas an identical petition was presented to the President of the Civil Tribunal of Valence on the 7th of July, and there were seized at Audier Brothers of said town, as appears from the minutes of the seizure drawn up on the following day, that is to say the 8th of July, 10 cases shipped to Victor Audier; on the same day, July 8th, Michel Cros, an avoué of Perpignan, acting as the representative of Lecouturier, presented to the Justice of the Peace of Argelès, a petition with a view to obtaining authorisation to describe and seize, wherever necessary, the products bearing the following label: "Liqueur

made by the Pères Chartreux"; and notably with a 1801
view to enjoining the Southern Railway Company, at the railway station of Cerbère, from delivering such goods to any consignee, Customs officials or any other bailee; an Order to this end was rendered and upon the same day, that is to say the 8th of July, Lecouturier seized at Cerbère 410 cases of liqueur which had arrived on the 5th of July, consigned to Arras, a Commission agent, the minutes of the seizure appointing as keeper Mr. Vincent Orpy, upon whom was duly served in such capacity a copy of the petition presented on application for the Order and of the minutes of the 1802
seizure; whereas by a legal document served on the same day, Lecouturier formally enjoined the Southern Railway Company, until further order of the Court, from delivering any goods, without any exception whatever, which they now have or may have hereafter, shipped by "La Union Agricola" and containing a liqueur made at Tarragona by the Pères Chartreux.

Whereas, on the 11th of July, same year, "La Union Agricola" summoned Lecouturier to appear before the Civil Tribunal of Grenoble, with a view to asking the Court to declare that Lecouturier had no right to cause the goods in question to be 1803
seized, because he was not entitled to act and because the liqueur so seized constitutes neither an infringement nor a fraudulent imitation of the label of the old liqueur made at Grande Chartreuse, nor yet the usurpation of a name; that such seizure be therefore vacated purely and simply; that "La Union Agricola" be at liberty to dispose of the goods so seized and that Lecouturier be enjoined from hereafter causing any further annoyance to said Company as regards the free disposal and enjoyment of the marks of which they are the owners; that Lecouturier be condemned to pay

1804 said Company a sum of Fr. 20,000 as damages and Fr. 1,000 for each day's delay in vacating said seizures.

Whereas by legal documents served on the 15th and 16th of July 1904, Lecouturier summoned before the Court Durand, as consignee, and Brézun & Co. as senders, and by other legal documents served on the 16th and 18th of July, summoned Audier Brothers, as consignees and Brézun & Co. as senders, and requested the Court to declare the seizures made at Marseilles and Valence legal as regards the procedure and justified as regards the merits; that the defendants were guilty of usurp-
1805 ing, infringing and fraudulently imitating the mark belonging to Lecouturier by using such mark on the products shipped by "La Union Agricola"; that said Company be condemned to pay any damages that may be determined upon; that the products seized be confiscated; and that the judgment be published in all newspapers, at the choice of the Liquidator.

Whereas on the 21st of the same month, Lecouturier summoned to the same end "La Union Agricola" and Arras and the copy of the summons and complaint for the Union Agricola was served at
1806 the office of the Attorney-General at Céret.

Wheras on the 5th of August 1904, Modeste Paulo, of Argelès, presented a further petition to the Justice of the Peace and seized on the same day 25 cases of liqueur shipped by "La Union Agricola" to the Eden-Bars Company at Lyons, as appears from the minutes of the seizure, a copy of which was handed to Vincent Orpy, the keeper, for the purpose of rendering such seizure valid;

Whereas by reason of the urgency of the matter and of the prejudice suffered by "La Union Agricola" on account of said seizures, and particularly by reason of the injunction served on said South-

ern Railway Company to stop all liqueurs shipped by "La Union Agricola" the latter incidentally made application to the Court, asking as an urgent measure, the rights and arguments of the parties being reserved, that the effect of the seizures be restricted and limited to the samples necessary for the preliminary investigation of the actions brought to validate or annul the seizures and that "La Union Agricola" be once more at liberty to dispose of their goods; 1807

Whereas, by a judgment of the 12th of August last, the Court recognized Lecouturier's offer and 'La Union Agricola's' declaration to the effect that such Company accepts, as a provisional measure, that the goods seized on the 8th of July at Cerbère, still remain under seizure, but on the condition that all goods shipped or to be shipped since that date shall not be liable to seizure and that "La Union Agricola" shall be absolutely free to dispose of the same until the Court has decided the matters now pending before it; the rights of the parties, both as regards procedure and the merits being expressly reserved. 1808

Wheras these different demands are connected with four actions brought by Lecouturier against "La Union Agricola" and Brézun & Company as senders, and against Arras, Durand, Audier and the Eden Bars, as consignees or holders, for the purpose of validating the seizures made by him; and such demands are also connected with the action brought by "La Union Agricola" against Lecouturier asking that the seizures made against Arras, Durand and Audier be cancelled; whereas the solution of such actions, both as regards the principal pleadings and the counter pleadings, depends on the examination of the trademark of "La Union Agricola" in order to establish whether such marks constitutes or does not constitute an 1809

1810 infringement or fraudulent imitation of the mark of Grande Chartreuse, which the judgment of the 23rd of April 1904 declared was part of the assets of the Receivership entrusted to Lecouturier; whereas there is a connexion between such actions; the same questions have to be decided, and it is in the interest of the parties to the case, in order to avoid expenses, that such issues be joined, the Courts having the right to do so officially when the actions before them have the same object, and present, even between opposing parties, the same contest.

1811 Wheras the defendants have raised against the procedure directed against them by the liquidator various objections as to the regularity of its form and wheras it behooves us to first examine the same;

Whereas if, as alleged, the Orders authorizing the seizures are general and do not indicate the places where they should be made, or the persons in whose hands such products are to be found, on the other hand there is no law providing, under pain of nullity, that such indications be set forth, as alleged by the defendants; whereas the law on nullity is narrow and nothing can be declared void

1812 unless there is a law providing for the same; therefore the Orders rendered by the judges who authorised the seizures are valid, but however broad the powers given by the law of the 23rd of June 1857 to magistrates for proving infringements may be, Lecouturier could not serve an "opposition" on the Southern Railway Company for the purpose of stopping the goods shipped by "La Union Agricola" and thus hinder the business of such Company, this not being authorised either by the law of the 23rd of June, 1857, or by the principles of common law;

Wheras the petitions asking for the seizure at Cerbère were presented to the Justice of the Peace of Argelès by a representative acting on behalf of Lecouturier; whereas "La Union Agricola", Arras and the Eden Bars argue that such proceeding is null and void by virtue of the principle "No one in France can bring an action or defend the same through an attorney-in-fact." 1813

Whereas neither the petition presented in order to obtain authorisation to seize, nor the seizure itself, constitutes the beginning of an action; whereas every authority on the subject agrees that such procedure is a form of proof of the existence of an infringement; therefore, the formalities to be complied with to attain such end may be asked through the intermediary of an attorney-in-fact, subject, however, to the principal himself taking proceedings to validate the seizure, which is the first step in the action pending before the Court; 1814

Whereas, according to the terms of article 17 of the law of the 23rd of June, 1857, there should be left with the holders of the property seized or described copies of the Order and of such notice as sets forth the filing of security, and this under pain of nullity in the event of omission; and whereas the seizures made at Cerbère against Arras and the Eden-Bars on the 8th of July and 5th of August, 1904, were notified to Vincent Orpy, the keeper appointed in the minutes of the seizure, but whereas no copy was left with the holder of the property seized, and whereas the omission of such formality carries with it the nullity of the seizure by application of article 17 hereinabove cited; for even if Lecouturier on the 8th of July notified to Durand, the liquidator of the firm of Arras, the "opposition" enjoining him from disposing of such goods as he had or might have, consigned to him by "La Union Agricola" and notably 1815

1816 the 410 cases which were in transit at the station of Cerbère, still he did not serve either on Durande or on the Southern Railway Company, the petition, the Order and the minutes of the seizure; whereas such "opposition" cannot replace the service required by law, under pain of nullity;

Whereas article 69 of the Code of Civil Procedure provides that persons established abroad should be served with a summons and complaint at the office of the Attorney-General of the Court where action is brought; whereas such formality is prescribed, under pain of nullity, by article 70 of the same Code; whereas the summons and com-
1817 plaint of "La Union Agricola" to appear before the Civil Tribunal of Grenoble was served on the 21st of July at the Office of the Attorney-General of Céret; whereas the action having been brought before the Civil Tribunal of Grenoble, such summons and complaint is null, by application of articles 69 and 70 above cited; whereas such nullity would also carry it with the nullity of the minutes of the seizure of the 8th of July against Arras, if the same were not void in itself, for article 18 of the law of the 23rd of June, 1857, provides that a seizure is null if it is not followed by a summons
1818 and complaint within a fortnight, and a summons and complaint, if null and void, being considered inexistent, the minutes would be null for not having been followed by a valid summons and complaint within a fortnight;

Whereas in spite of such nullities, the action of the liquidator against "La Union Agricola" and other defendants subsist, subject to his establishing, elsewhere than in the seizure, the proof of the misdemeanour he complains of; such proof is furnished in the present action, since "La Union Agricola" claims the right of using the trademark, far from denying having made use of the same; where-

as, moreover, by the seizures against Durand and Audier, regular as regards procedure, as also by the principal action brought by "La Union Agricola" to annul said seizures, the questions raised by the claims of the parties to the case are regularly brought before the Court; 1819

Whereas in the pleadings of the 12th of November, 1904, Lecouturier contends that "La Union Agricola" is guilty of infringing or at least of fraudulently imitating the marks of which he is Administrator-Receiver; that such Company is guilty of usurping a name, under the terms of the law of the 24th of July, 1824, or to say the least, that the Company, by acting as it has, is guilty of unfair or unlawful competition; 1890

Whereas "La Union Agricola" in its answer states, on the one hand, that the mark adopted by it to identify its products does not constitute either an infringement, or a fraudulent imitation of the mark claimed by Lecouturier; whereas article first of the law of the 28th of July, 1824, cannot be applied, because such Company does not affix on its products the name of a manufacturer or of a place that is not conformable to the truth; and on the other hand, because the pleadings served the day before the case came on for trial, asking for the condemnation of "La Union Agricola" as being guilty of unfair or unlawful competition, are not within the jurisdiction of the Civil Court, and moreover they are not receivable on the ground of a question of procedure; inasmuch as they were not included in the summons and complaint by which action was begun; 1891

Whereas the action is thus well defined and the Court ought to successively examine all the questions submitted to it;

As regards in fringement and fraudulent imitation:

Whereas the present action is of a peculiar nature, which it may be useful to comment;

Whereas, in ordinary actions for infringement, there is always a manufacturer whose products have gained the confidence of the public and whose mark guarantees the authenticity of their manufacture, protecting himself against infringers who by a more or less ingenious imitation of his mark, are attempting to avail themselves of the reputation of the products of their competitor in favor of their own product; whereas, in the present case, Lecouturier, Liquidator of the property of the Congregation of the Chartreux, is as a matter of fact in possession of the mark of Grande Chartreuse, but the products which he has manufactured at Fourvoirie and which he offers the public as such are not those which the Chartreux manufactured according to their processes of manufacture and sold until they were expelled from the Monastery of Grande Chartreuse; whereas, by application of the law of the 1st of July, the mark of the Grande Chartreuse may have remained in the hands of the Liquidator of the dissolved and expelled Congregation, but the secrets or processes of manufacture have been carried away by the Chartreux as a property unseizable, as long as the non-patented processes remain unknown, and the mark thus found itself separated from the product, the origin of which it had theretofore guaranteed;

Whereas this particular situation resulting from the new legislation, confronts on the one hand the liquidator who sells under the old mark of Grande Chartreuse a product which is not manufactured by the Chartreux, with the Chartreux on the other hand, Lecouturier recognizing their right to make liqueurs according to their processes but wishing to prevent them from using their name to identify

and characterize the products so manufactured by them;

Whereas a trademark, which has its origin in liberty of work, ensures to each the credit and renown he has been able to acquire and protects the manufacturer who has become known through the constant superiority of his products, fidelity and good faith in his business relations;

Whereas the value of a mark resides above all in the product it protects and not in itself, outside of such product, although according to our law, and contrary to the legislation of other countries, the product and the mark are not indissolubly united; whereas if we consider the reputation of the products of Grande Chartreuse, make by the Chartreux, it is certain that "La Union Agricola" was vitally interested not to allow a confusion to arise between the products offered by them to the public and those of the liquidator, but on the contrary to make a clear and precise distinction between the liqueurs made by the Chartreux and those made by Lecouturier;

Whereas "la Union Agricola" wishing to identify its products, had to take the necessary measures with a view to making its products known to the public under conditions which would not allow of any confusion which, according to said Company, would benefit Lecouturier alone, whereas they would be injured by it;

Whereas said Company declares that it had such object in view when choosing the label and that it is advisable to examine whether the course pursued by said Company turned out contrary to expectation;

Whereas articles 7 and 8 of the law of the 23rd of June, 1857, punishes the infringers of a mark or those who, without infringing a mark, fraudulently imitate it, so as to deceive the purchaser;

1828 Whereas by infringement is meant an absolute and complete reproduction of the mark;

Whereas it is still an infringement, in spite of insignificant modifications, if an essential and characteristic part of the mark is identically reproduced. (Pouillet No. 139.)

Whereas a mark may be imitated by any means which imagination can suggest to the infringer, but it is also necessary, when imitation exists as a matter of fact, that the same be fraudulent, that is to say made with a culpable intention, and of a nature to deceive the purchaser; whereas, in order to judge whether there is more or less possibility
1829 of a confusion arising, there should not be taken as a term of comparison the degree of attention of the first comer, or ignorant and unintelligent consumer, but the degree of attention of the vigilant consumer, sufficiently careful of his interests (Pouillet 189); whereas questions of a like nature are above all questions of fact, which are left to the sovereign appreciation of the judges who, in order to pass upon such questions, should examine the trademarks submitted to them, taking into account the similarity and the differences which may exist between them;

1830 Whereas it appears from the filing of the marks by Abbé Rey that the marks the object of which is to distinguish from all others the products made at his factory, known under the name of products of Grande Chartreuse, consist in round labels and rectangular labels, yellow or green, which are affixed on the cork and on the bottle itself; whereas the round labels, besides a double circular line, bear the following words, parallel to such lines: "Liqueur made at Grande Chartreuse" or "Grande Chartreuse", and underneath the signature of Garnier, with a flourish and one or two globes surmounted by a cross, or even without any globe;

whereas the rectangular labels bear the following words within a small square or border ornamented with pearls: "Liqueur made at Grande Chartreuse" and underneath, on the right and left sides, the signature of L. Garnier, with a flourish, the top part of which is under a globe surmounted by a cross, together with a watermark representing a globe bearing a cross surrounded by seven stars, surmounting the signature of L. Garnier. 1881

Whereas the characteristic and distinctive elements of such mark consist in the words "Grande Chartreuse", the square border with dark pearls, the signature of Garnier, the arms of Grande Chartreuse and the globe surmounted by a cross surrounded by seven stars; whereas, for the purpose of still further distinguishing his products, Abbé Rey filed the model of a bottle together with a cartouche containing the arms of the Convent embossed or engraved in the glass and the words "Grande Chartreuse"; 1889

Whereas the mark of the 'Elixir Végétal' of Grande Chartreuse is printed in black on a white background, with the globe and cross as a watermark and the signature L. Garnier; such mark is affixed to bottles having a characteristic shape, which bottles were filed; 1888

Whereas the mark of "La Union Agricola" is described as follows in the certificate of filing: A large label stuck on the cylindric part of the bottle and composed of the following elements: 1. In the centre, a lozenge the top part of which is green and the inferior part yellow; the lozenge has for a watermark, on the one hand the letters CAR interwoven in a particular way, the central line, which ends by a cross, forming one of the strokes of the letter A, and on the other hand, surrounding the word CAR, three ellipses the central one of which is formed by rosary beads or small pearls; 2. cer-

1884 tain words printed in black fancy letters: "Liqueur" above the lozenge, "made" on the left side of the lozenge, "at Tarragona" on the right side of the lozenge, and "by the Pères Chartreux" underneath the lozenge; 3. a border of flower-de-luce, in black;

Whereas, moreover, "La Union Agricola" filed a cylindric bottle, the neck being conic shaped, with a butterfly stuck near the neck of the bottle, bearing the words CAR;

Whereas the description of the two labels, as appears in the certificates of filing, shows up considerable differences between them, such differ-
1885 ences being even more visible by a comparison between the two labels once they are affixed to the bottles;

Whereas the trademarks of "La Union Agricola" differ from those of the liquidator in size, being twice as big; their color is of a paler green or yellow ,the inside is checked instead of being plain; the disposition of the elements consists of four instead of two lines; a green and yellow lozenge is in the centre, and there is no signature or flourish; whereas such differences in the label, which strike one at first sight and allow of no confusion with
1886 the old label of Grande Chartreuse, are rendered even more striking by the differences in the form of the bottle; the capsule of guarantee, the color of the wax, the absence of a cartouche in the glass and the presence of the monogram CAR which is affixed near the neck of the bottle and attracts the notice of even a careless consumer;

Whereas neither the color of the paper, green or yellow, which distinguishes the quality of the liqueur, nor the words "Liqueur made", to be found in both labels, should be considered; whereas it is customary in the liqueur trade, to distinguish the same by the color of the label and that the words

"Liqueur made", which are not the exclusive property of the liquidator, and can be and are employed by all liqueur manufacturers, cannot be said to constitute a fraudulent imitation, inasmuch as the same are contained in two lines instead of one and printed in different type, so that such words, in the label of the "Union Agricola" bear no resemblance to the label of Grande Chartreuse; 1887

Whereas the label of the 'elixir' made by "La Union Agricola" is green, and that of Lecouturier white; whereas the arrangement of the letters and the shape of the bottle are absolutely different;

Whereas, from the comparison of such elements, it is evident that "La Union Agricola" did not imitate the mark by Lecouturier and that the material elements which constitute an imitation do not exist, independenly from the absence of fraudulent intent, with which the Company cannot be charged; 1888

Whereas Lecouturier maintains that in spite of the impossibility of any confusion, an infringement does exist, because of the mere fact that the competitor of the owner of the mark makes use of the essential element of his mark, and "La Union Agricola" infringed the essential element of the mark of Grande Chartreuse by using the word Chartreux, which is the equivalent of Chartreuse; 1889

Whereas if it is true that the usurpation of the essential element of the mark constitutes an infringement, such principle only receives its application when such essential element is the exclusive property of the owner of the mark, for instance when the denomination is a fancy one, but such is not the case when the essential element is the name of a place of a patronymic name which cannot become the exclusive property of the person filing the mark, and can be also used by a manufacturer from the same place or bearing the same

name, subject to his taking the necessary steps to avoid possible confusion between the two competing firms, on account of the similitude between the two names;

Whereas the mark filed by Abbé Rey does not contain the word "Chartreux" and moreover the word "Chartreuse" which was filed by him was never used as a trademark applied to his products; whereas his label only contains the words: "Liqueur made at Grande Chartreuse;" that the numerous decisions which confirmed in favor of Abbé Rey and his predecessors, the ownership of the word Chartreuse, by holding that such word is the abbreviation of the label and refers to the name of the manufacturers, the Pères Chartreux, and especially to the name of the place of manufacture Grande Chartreuse (Court of Cassation, 10th of August, 1880), did not take the word Chartreux as constituting an element of the mark, in which it does not appear; that if the Courts condemned on the ground of infringement those merchants who called their liqueur "Liqueur des Chartreux" and represented the monks and the Convent on their label, it is because such liqueur manufacturers, contrary to the law of the 28th of July 1824, put on their label the supposed name of a place and took the name of a manufacturer which did not belong to them (Judgment of the Tribunal of the Seine, 8th March 1855) whereas Lecouturier cannot quote such decisions against "La Union Agricola", because they do not make use of a supposed name, but the real name of the manufacturers, the "Pères Chartreux" but it can be examined whether the Pères Chartreux, by application of the law of the 1st of July 1901, have lost the right to use such name, and whether the liquidator could alone use it;

Whereas it is thus established that "La Union Agricola" has neither infringed nor fraudulently imitated the mark of Grande Chartreuse which Lecouturier entered into possession of, and articles 7 and 8 of the law of the 23rd of June 1857, the benefit of which is claimed by the liquidtaor, cannot in this case be applied. 1843

As regards the usurpation of the name:

Whereas article 1st of the law of the 28th of July 1824 punishes those who affix or cause to be affixed, whether by addition, suppression or modification on manufactured articles, the name of a manufacturer who is not the real manufacturer of such articles, or the commercial name of another factory than that where such articles were made, or the name of another place than the place of manufacture; 1844

Whereas the law of 1824 respects liberty of industry, established no monopoly or privilege and allows a manufacturer to imitate or copy in any way methods and processes; its object was to confirm a principle: the guarantee of the names of manufacturers and of places of manufacture; such law only represses the act of putting on products an indication as to origin contrary to the truth, by giving a false name of origin or of the manufacturer; 1845

Whereas the trademark filed by "La Union Agricola" indicates Tarragona as the place of origin and as manufacturers the Pères Chartreux; whereas the mark indicates that the liqueur is made by the Pères Chartreux in the distillery of "La Union Agricola," a société anonyme" of Tarragona; that such indications correspond with the real situation and inform the consumer of the real place of manufacture and of the real name of the manufacturers; that the law of 1824 which does not punish a statement contrary to truth, cannot be ap-

plied to a trademark which contains nothing that is not conformable to the truth;

Whereas Lecouturier, in order to avail himself of the law of 1824, maintains that "La Union Agricola" cannot make use of the words "Pères Chartreux" because he alone is entitled to use the same to designate the Chartreux as manufacturers, and that such exclusive right is his by virtue of the law of the 1st of July 1901, as Administrator Receiver of the property of the Congregation of the Chartreux;

Whereas the words "Pères Chartreux" constitute a name which belongs to the Order of Carthusians, as a community, and to the monks who are members of such Order so long as they remain attached to the same, and so long as they faithfully obey the statutes of the Order; whereas the ownership of such names, as manufacturers, has been established in favor of the Chartreux by numerous decisions of the Court, which confirmed such ownership in their favor, by virtue of article first of the law of the 28th of July 1824; after the expulsion of the monks, if the law of the 1st of July 1901 which dissolved Congregations, dispersed individuals and property, did place in the hands of a Receiver the property held by the Congregation, the Pères Chartreux have nevertheless kept their name both as an order and as Monks, and this name they have kept in their new residence;

Whereas the right of using one's name for the carrying on of a business has always been recognized and sanctioned by the decisions of the Courts, subject to the Courts repressing any abuse of such right, for the purpose of usurping, through fraudulent confusion, the advantages of the credit and reputation acquired by a third person already known under the same name but the Courts have not the power to deprive a man in business of the

faculty of using the name which belongs to him for the purposes of his business, by an absolute prohibition which would constitute a wrong done him in his right of proprietorship (Cassation 30th of January 1878); 1849

Whereas such principle has been respected, either when a trademark is the object of a dispossession for public purposes and the owner of the mark desires, after dispossession, to continue carrying on his business under his name, or when a mark is seized by a creditor against his debtor, and the latter has started a new business under his patronymic name (Pouillet Nos 91 and 601) or even when the owner of a mark which consists of his name sells his business with the mark and files a new mark; which contains his patronymic name; whereas, in this latter hypothesis of a voluntary transfer, which is quite different to the present case, the Court of Cassation held that if the fact of purchasing a business to which was attached a trademark gave the purchaser the right of using such mark, such as the same was created by the former firm, this right is not absolute and should be limited, when one of the principal elements of the industrial sign is a proper name, by the necessity of leaving to the owner of the name what use without abuse may admit of. (Court of Cassation, April 20th 1896); 1850 1851

Whereas this respect of the proprietorship of a name and of the right to use the same, carries with it but one exception and that is when the owner of the name who does not use the name himself, is not in business, and has no interest in a business, transfers his name to a third person with a fraudulent intent;

Whereas it follows from such principles, that even in the words "Pères Chartreux" had been a part of the business of which Lecouturier is Ad-

1852 ministrator Receiver, either as a trademark or as a commercial or firm name, the Pères Chartreux would still have the right to use their name as manufacturers to designate their products, subject to their avoiding confusion between the liqueurs made at Tarragona and those made at Fourvoirie, and in this respect, the precautions taken by "La Union Agricola" as regards their labels, flasks and bottles would be sufficient to avoid confusion between the two commercial establishments;

But whereas Lecouturier, as Administrator Receiver of the property of the Congregation and of the business of Abbé Rey, has no right to the
1853 words: "Pères Chartreux;" whereas such name was never a part of the trademark of Grande Chartreuse; whereas the products offered to the public were so offered under the name of products of Grande Chartreuse, which was the commercial name of the business, as appears from the judgment of the 23rd of April 1904, quoted by Lecouturier; whereas the commercial name was that of Garnier, as appears from the same judgment which grants to Lecouturier the exclusive right to the industrial and commercial use of the name of L. Garnier; whereas the Chartreux who manufac-
1854 tured the products of Grande Chartreuse have never called the same by their name "Chartreux"; they have never given such name to their commercial establishment and never used it in their labels, invoices, or correspondence and if the effect of the law of the 1st of July 1901 was to deprive them of their business and of the accessories of the same, such law cannot deprive them of their name inasmuch as it has never been an accessory of the business;

Whereas the Chartreux, who have retained the right to make liqueurs according to their peculiar processes of manufacture, have also the right to

make known their products to the public or to identify the same under their name as manufacturers, that is to say "Pères Chartreux" which still remains their property; therefore Lecouturier cannot charge "La Union Agricola" and the Chartreux with having usurped a name; 1855

Whereas the solution admitted of by the Court as regards the relations between "La Union Agricola" and Lecouturier does away with the necessity of examining the subsidiary questions raised in the pleadings of the other defendants, Durand et ala.

As regards unfair or unlawful competition: 1856

Whereas Lecouturier maintains that "La Union Agricola" by engaging the services of the Pères Chartreux, by employing former agents of Grande Chartreuse, by advertising in such a way as to throw discredit on the old mark of Grande Chartreuse , is guilty of unfair or unlawful competition, for which he asks satisfaction;

Whereas the summons and complaints of Lecouturier and of "La Union Agricola" by which the present action was brought before the Court, only refer to the seizures made by the liquidator and do not mention unfair or unlawful competition; whereas the same only refer to the cancellation or validity of said seizures; whereas Lecouturier only made his application in the pleadings served on the 12th of November 1904; whereas "La Union Agricola" opposes such pleadings on the plea that the Court is without jurisdiction on the one hand, and on the other that such a demand is irreceivable because it is presented in the pleadings; 1857

Whereas it is a well-established principle that Commercial Courts have jurisdiction as regards actions between persons engaged in trade, brought for unfair competition; whereas it cannot be denied that the present case is one between Lecou-

turier, exploiting a commercial mark and, and "La Union Agricola," a business corporation; whereas if it is admitted that when an action for infringement is brought before a Civil Court, as regards which it has exclusive jurisdiction under the law of 1857, said Court may secondarily and incidentally to such action, pass upon acts which constitute unfair competition and are inherent to infringement, by virtue of the principle that Civil Courts have full jurisdiction, such principle is only applicable when the Court, recognizing the existence of an infringement and repressing the same, passes upon the acts of unfair competition as incidental to the principal demand; whereas this cannot be the case when the question of infringement or imitation having been set aside, it only remains for the Court to render its sentence as to the facts from which it is sought to infer proof of unfair or unlawful competition; whereas the Civil Court cannot in such case retain those facts which, if separated from the infringement, are not within its jurisdiction and should be submitted to consular judges; whereas the Court, dismissing Lecouturier's action as regards infringement or fraudulent imitation of the mark of Grande Chartreuse, is without jurisdiction as regards his demand asking that "La Union Agricola" be condemned on the ground of unfair or unlawful competition. (Pouillet, Nos. 270 and 671).—Montpellier, 24th of February, 1879; Nancy, March 16th 1900) whereas Lecouturier and "La Union Agricola" are undoubtedly interested in promptly obtaining the judgment of the Court as to the facts which it is alleged constitute unfair or unlawful competition and which they may mutually charge one another with; but the Court's statement that it is without jurisdiction, according to the rules on the subject, cannot be a cause of complaint for

either of them from this point of view, since the case, on account of its nature and importance, must unavoidably be brought before the Higher Court, and it is for the parties, when the case is ready for hearing, to request the Court of Appeal to pass upon the merits, by application of article 473 of the Code of Civil Procedure, and thus obtain a solution of the matter which will in no way have been delayed by the fact that the Court has no jurisdiction. 1861

Whereas the seizures made by Lecouturier in July and August 1904 have without any doubt caused the defendants a prejudice for which they ought to obtain reparation, with the exception however of Arras, who is merely the representative of Dubonnet and Brézun & Company, consignees and senders, who have not proved that they are entitled to any damages, outside of the costs of the case; whereas the Court is in a position to fix the amount of damages, taking into account, as regards "La Union Agricola" the disturbance caused by such seizures in said Company's business and especially the fact that 410 cases of liqueur representing a capital of Fr. 35.000 were not available from the 8th of July 1904; and as regards the other defendants, the time during which they were deprived of their goods, viz., Durand and Victor Audier during about thirty days, and the Eden Bars during a very much shorter time; 1862 1863

Whereas the costs are to be borne by the losing party.

WHEREFORE:

The Court, deciding as to an ordinary matter and in the first instance, after hearing the solicitors and counsel of the parties, and Mr. Despélou, Attorney General in his conclusions and after deliberating in conformity with the law, without de-

1864 ciding as to all contrary demands, pleas and exceptions,

Orders that the issues brought before the Court by legal documents served on the 11th, 15th, 16th, 18th, 21st of July and 19th of August 1904 be joined;

Annuls on account of flaws in the procedure, by application of articles 17 and 18 of the law of the 23rd of June 1857 and articles 69 and 70 of the Code of Civil Procedure, the seizures made at Cerbère on the 8th of July and 5th of August 1904, and the summons and complaint of the 21st of July served on "La Union Agricola;"

1865 Declares that "La Union Agricola" has neither infringed nor fraudulently imitated the mark; annuls, therefore, the seizures made at Marseilles and Valence on the 4th and 8th of July 1904;

Declares that "La Union Agricola" is entitled in its labels to make use of the words "Pères Chartreux" to designate the manufactures of the liqueur mdae at Tarragona and that said Company has not usurped a name;

Declares that it is without jurisdiction to decide as to the question of unfair and unlawful competition;

1866 Condemns Lecouturier, in his official capacity, to pay, together with legal interest, as damages, the sum of 1.800 francs to "La Union Agricola;" the sum of 75 francs to Durand; the sum of 75 francs to Victor Audier, and that of 25 francs to the Eden Bars Company;

Condemns Lecouturier to pay as well the costs as regards all parties.

So judged and ordered by the first chamber of the Civil Tribunal of first instance of Grenoble, Isère, at a public hearing held in the ordinary audience room, at the Court House, Place Saint An-

dré, the day, month and year as above written. 1867
There were present Messrs. Rabatel, Presiding Justice, Chevallier, Judge, and de Lavau, assistant judge, who acted for the usual judges. In the presence of Mr. Despélou, Attorney General, assisted by Garnier, Clerk of the Court. On the minute appear the following signatures: Rabatel, Presiding Justice and Garnier, Clerk of the Court. Registered at Grenoble this 31st day of May 1905, folio 6 case 8. Received, for dues and tax 91 francs and 65 centimes. The Receveur, signed: Begou. Therefore, the President of the Republic of France, orders any process-server required so to do, to execute the 1868
present judgment; likewise any Attorney General and District Attorney of a Court of first instance to help them, and all commanders and officers of the public force to give assistance if they are lawfully requested to do so. A true copy. Signed: David, Clerk of the Court.

1869

1870

Defendant's Exhibit 25
Hamburg Judgment

(TRANSLATION.)

In the matter of Mr. Lecouturier, of Paris, plaintiff, acting through his attorneys, Messrs. Behn, Kaemmerer and Niemeyer,

And Celestin Marius Rey, temporarily residing at Barcelona, defendant, acting through his attorneys, Messrs. Schmeisser and Levy.

Judgment of the 7th Chamber of the Civil Tribunal of Hamburg, of the 23rd of February, 1906
1871 (Chief Judge Dr. Riecke, Judge Dr. Michakelles and Judge Dr. Noldeke):

Upon the appearance and opposition of the defendant, the Order of the 4th Chamber for Commercial Affairs of the Tribunal, dated the fourth day of May one thousand nine hundred and five, is annulled in so far as the same prohibits the defendant under penalty of a fine of 1,000 marks for every offence, from preventing the importation and exploitation of the entire products represented by the plaintiff under said marks. As regards the rest, the opposition of the defendant to said
1872 Order is dismissed.

The costs of such proceedings are to be borne in the proportion of one-tenth for the plaintiff and nine-tenths for the defendant.

This judgment is declared to be enforcible pending final determination.

FACTS.

In the Register of the Imperial Patent Office are recorded, in the name of the defendant Rey, the following trademarks: Nos. 11989, 11992,

11993, 11995, 11997, 11999, 12003, 12004, 12012, 12013, 12023, 13764, 14311. 1873

In accordance with paragraph 23 of the law on the protection of trademarks, Levy, an attorney of this town, is entered as the representative of Rey.

The object of the trademarks is to protect the liqueurs, elixirs and other products manufactured as Grande Chartreuse and at Fourviorie, under the name of "Liqueur fabriquée a la Grande Chartreuse," "Elixir végétal de la Grande Chartreuse," "Produits de la Grande Chartreuse."

As a consequence of the French law on associations of the 1st of July 1901, the Order of Carthusian Monks who manufactured the above mentioned products has been dissolved. By virtue of a judicial decision, the plaintiff was appointed Administrator-Receiver and Liquidator of said Order and of all the property belonging to said Order. He maintains that the above marks are also a part of the property administered by him, although they were not recorded in the name of the Order, but in the name of the defendant Rey; and that the latter was merely a person interposed, who did not receive the marks for his own use, but merely lent his name. 1874 1875

The plaintiff, therefore, is entitled to the transfer of the marks in his name, this being already recognized in France by a judgment of the Civil Tribunal of Grenoble, dated the 23rd of April 1904. Such judgment as also the judgment of the Court of Appeal confirming it, was presented by him to the Court.

For the above reasons, the plaintiff prays for a provisional Order prohibiting the defendants from using the marks set forth in Exhibits 2-15, disposing of the same, or taking any steps with a

1876 view to preventing the importation or the exploiting of the entire products represented by the plaintiff under the above mentioned marks.

It is clear that the plaintiff would suffer considerable loss were the prohibition contained in such Order to continue and were it necessary to wait for a judicial decision. The First Chamber for Commercial Affairs of the Tribunal rendered on the fourth day of May one thousand nine hundred and five (act. 3) an Order which was served on the plaintiff the same day, on the defendant Dr. Levy the fifth day of May one thousand nine
1877 hundred and five and on the defendant Rey at Barcelona on the twenty-fourth day of November one thousand nine hundred and five. The plaintiff asked for service of said Order through diplomatic channels on the fifth day of May one thousand nine hundred and five and the thirteenth of June one thousand nine hundred and five; the first time of asking it was impossible to effect service. The Court, before rendering the Order, asked that a sum of Mks. 20,000 be deposited as security and condemned the defendant to the payment of a fine of Mks. 1,000 for every infringement.

Dr. Levy appeared and opposed said order in
1878 the names of the two defandants, and asked at the same time, inasmuch as the complaint is not founded upon a violation of the right to the mark, that the same be brought before the Civil Chamber having jurisdiction. The Fourth Chamber for Commercial Affairs thereupon rendered the decision of the sixth of December one thousand nine hundred and five.

In the name of the two defendants, Dr. Levy asks that the Civil Chamber annul the Order. The plaintiff asks that the opposition be dismissed.

The grounds for the opposition, as set forth by

Dr. Seligsohn who assisted Dr. Levy, are as follows: 1879

In the first place the plaintiff lacks the capacity to join in the action or to plead. The Order of Carthusian Monks, in whose name he presents himself, according to the provisions of German law and especially of article 10 of the Introductory Law to the Civil Code, does not possess capacity to sue or be sued. If the plaintiff states that he is acting by virtue of the French law on Associations of 1901, such claim cannot be sustained, for this law, being a law of Police and safety, is not applicable outside of French territory, according to article 3 of the French Civil 1880
Code. Dr. Seligsohn quoted in support of this the Opinion of Professor Weiss, which is annexed to the papers in the case. This also does away with any right to the marks claimed by the plaintiff. These marks represent property situated abroad, and as such they are governed by German law alone. We should add that the defendant Rey transferred his business to Tarragona, where he continues to manufacture his products. Under these circumstances, it would be extraordinary that the plaintiff should claim such marks, as he is unable to produce the goods protected by such 1881
marks. In any case, the order is too extensive in its tenor. An Order against Dr. Levy is absolutely unjustifiable, for he is only the representative of the marks.

Before anything else, the plaintiff asked for a power signed by the defendant, in the name of Dr. Levy. He then stated that he was the Liquidator of the property of the Chartreux, so appointed by virtue of a judicial decision, and that in such capacity, he was entitled to ask for the transfer of the marks. Such right resulted from the rela-

1882 tions existing between the Congregation of Carthusian Monks and Rey. The latter has only a derived right which he must give up when he is requested to do so. Subsidiarily, he relies upon the law on Associations of 1901, which authorizes him to take possession of all the property of the Chartreux. Such marks are a part of the business which was transferred to him, as was held in the decisions of the French Courts which we quoted above. This also results from the nature of the case, for the marks merely constitute an accessory right. The transfer of the marks to Rey is not
1883 admissible, because Rey is a person interposed. The plaintiff withdrew the Order against Dr. Levy.

Dr. Seligsohn also stated that his adversary could not ask for a power, as in accordance with the law on trademarks, Dr. Levy was authorized to enforce the rights of Rey in all civil actions.

MOTIFS.

Basing his demand upon section 80 of the Code of Civil Procedure, the plaintiff requested that a legalized power of the defendant Rey, in the name
1884 of Dr. Levy, be produced. Such demand is not justified; for the power of Dr. Levy to act results from section 23 of the law on the protection of trademarks and from extracts of the Record of the Imperial Patent Office, produced by the plaintiff himself, which constitute public documents, in which Dr. Levy is described as the representative of the defendant Rey. But according to section 23, paragraph 23 of said law, he is authorized to represent him in all civil actions relating to said marks. This power has a general bearing and gives Dr. Levy the power to act in any action be-

gun for the purpose of transferring the marks to another person. It is in this capacity that Dr. Levy has the right to appear for Rey. 1885

After the plaintiff has withdrawn the Order rendered against Dr. Levy personally, and the same has thereby lapsed, there only remains to examine how far the Order rendered against Rey is sustained by the law.

In this connection it was necessary to examine how far the plaintiff has the right to sue or be sued, this right being denied him by his adversary. When a Congregation, like that of the Carthusians, is to be represented, the question is raised whether the right to sue or be sued has been conferred on such Congregation by a German legal document containing the preliminary conditions of such right. 1886 According to paragraphs 22 and 23 of the Civil Code, art. 10 of the Introductory Law to the Civil Code, the following are considered legal documents: records (books) of the Congregation, authorization of the competent authorities or a decision of the Federal Council. It is certain that no such document exists in favor of the Chartreux. And it is equally certain, according to French law, that the Chartreux, prior to their dissolution, had no capacity to sue or be sued as a Congregation. 1887 But this is not decisive as far as the capacity of the plaintiff to sue or be sued is concerned; for he is not acting as a representative of the dissolved Order of Carthusians, but holds his rights directly under the law.

The plaintiff is the liquidator of the property of the dissolved Congregation appointed by virtue of a judicial decision, under article 18 of the French law of the first of July 1901, authorization having been refused such Congregation by the competent public authorities. In such ca-

pacity he enjoys all the rights of an Administrator-Receiver; he has to decide as to what property there is and to take possession of such property as appears to belong to the Order, for such Order, having no legal standing, cannot own property from a legal point of view. The Liquidator is to return to the members of the Order such property as to which they have a legal claim, whether under the law, or because they have kept the same on entering the Order, or inherited the same, or received the same as a gift, under certain conditions. Any such claim must be made within six months. After such delay, the Liquidator is to sell all the property to which no claim has been made, and deposit the proceeds thereof with the State Treasury. The law has not decided as to what is to be done with such proceeds. But on this point, Trouillot and Chapsal will be followed in their Commentary on the law of the first of July 1901 (pages 349-372). Inasmuch as the Congregation (see article 1123, 1124, 906 of the Civil Code) cannot acquire property, such property, in so far as the same has not been claimed, according to law and by virtue of legal title-deeds, by the members of the Congregation or third parties, shall escheat to the State; this was undoubtedly the opinion of the Legislature, as appears from the discussion which took place at the time of the making of the law of the first of July 1901.

Under these circumstances, it is impossible to maintain that the liquidator has been entrusted with the Receivership for the Congregation; or that, acording to the terms of the German law, the Congregation is considered to be subsisting during the liquidation of the property; a point of view which moreover does not really exist in French law. The idea that the Congregation subsists dur-

ing the liquidation should be dismissed, for the simple reason that it is contrary to common sense that the law, after having dissolved the Congregation, should give it a legal standing during the liquidation, whereas, during its existence, it enjoyed no such standing. 1891

The plaintiff therefore cannot claim to represent the Congregation of Carthusian Monks; it is better to say that the plaintiff, who in the judgment rendered by the Court of Appeal of Grenoble is described as a "mandataire de justice" and who is entrusted with a public mission as would be a judicial Receiver (see the judgment of the Court of Cassation, Sirey, 1895 1-201) is an official appointed in the interest of the public to accomplish the object of the Receivership and who holds immediately under the law the rights which are necessary in order to exercise the actions and fulfil the duties required of him; he does not act as a representative but by virtue of peculiar rights. 1892

In conformity with article 7 of the Introductory Law to the Civil Code, the capacity of the plaintiff to join in an action, which is based upon French law, should all be recognized in Germany, unless the law, as alleged by the defendant, cannot take effect in Germany. It would be proper, if French law only gave the liquidator commercial capacity in France that the plaintiff be deprived of the right to join in an action in Germany. For commercial capacity should essentially be judged according to the rules of the foreign law. 1893

The defendant starts from the point of view that the law of the first of July 1901, in so far as the same is a law of Police and safety, cannot according to art. 3 of the French Civil Code, take effect outside of France; and therefore that the plaintiff cannot base his claim thereon; in support of this

1894 contention he produced an Opinion of Professor Weiss, of Paris. The Court does not deem it necessary to decide whether the law in question is really, in the sense of art. 3, a law of Police and safety, but it insists on this point, that the German interpretation of article 3 (see decision of the Imperial Court, Volume 12, p. 311) is much narrower than French law and practice. Even if we wanted to consider this law as a law of safety, as the defendant does, it would certainly not be contrary to aricle 3 of the Code that the plaintiff should enforce, even abroad, rights which should be regarded as a part of the property in his hands, es-
1895 pecially if such rights cannot exist by themselves and cannot be separated from the principal object. Even if the property of the dissolved Congregation situated outside of France does not come under the Receivership, that property which cannot be separated from the property situated in France should come under the Receivership. For it is evident that the only question which can be raised is whether such property, situated abroad, falls within the domain of the Receivership, or whether it belongs to the members of the Congregation. If the latter is excluded because of the nature of the
1896 property, the necessary result is that such property falls within the domain of the Receivership and that the Receiver can also enforce abroad the rights arising out of the same.

Such is the case with foreign marks introduced into Germany and thus one of the arguments in the Opinion of Professor Weiss falls to the ground The Imperial Court has held, Volume 46, p. 129 (and before the entire Court) that the protection extended in Germany to foreign marks was merely accessory; that only those foreign marks which were protected in their country of origin were en-

titled to protection in Germany; for a foreigner, 1897
there is no independent and protected German mark, but only the mark he has in his own country, which he brings into Germany so that it may also be protected there. And the same Court states in another decision (Volume 51, p. 267) that the right to a mark, contrary to the right to a patent, is not limited to a locality, nor can it be divided according to localities; it is not in itself limited to any locality. And this is why the right to a mark recognized in different countries for one and the same mark and the same person, who has an establishment in *one* of such countries is not an 1898
independent right to the mark in that one country; on the contrary it carries with it a legal extension of the right to the mark from the country in which the owner has an establishment to other countries.

If this theory of the character of foreign trademarks protected in Germany is accepted, the formal claim made by the plaintiff to enforce the rights he has acquired through the filing of the mark in Germany must also be admitted.

The question is whether the plaintiff has sufficiently proved that he possesses material authorization to dispose of the mark. This also should be answered affirmatively. It is clear to the Court 1899
that the marks which are protected because they have been filed in Germany are not marks belonging to the Order of Carthusians, which is scattered all over the world, but that the marks belong to the plaintiff for the purposes of his business at Grande Chartreuse and Fourvoirie in France.

This principle of territoriality results from the fact that the establishment for whose benefit the mark was filed in Germany was at that time at the above mentioned place, and that in conformity with article 20 of the law of trademarks the theory

1900 of reciprocity, as also that of the prior filing of the marks in their country or origin, was examined.

Finally the Court does not hesitate to state that the transfer to the plaintiff of the right to the marks cannot be questioned. Such transfer should be judged acording to German law, even for foreign marks, on account of the filing of the marks in Germany. According to German law, the transfer is effected if the mark is transferred together with the business to another person (paragraph 7 of the law on trademarks). It is on this point that the defendant opposes with the greatest
1901 energy the right of the plaintiff. He states that he is himself carrying on the business in Spain and that he alone is in possession of the secret of manufacture of the products in question, and that the legal transfer of a business does not include at the same time the right to the marks. This last point is clearly unsound.

It is allowed that if a business is transferred by contract, the parties need not mention the right to the marks; this is still more so when a business is transefrred by virtue of a law. When the legislator ordered that all the property held by the Congregations was to be handed over to the liqui-
1902 dator, he also stipulated the transfer of the marks, in case a business was included in such property. For the business without the marks has a much smaller value and even if the liquidator does not continue the business, he must sell it as advantageously as possible. It can be stated,therefore, that every time a business has been handed over to the Liquidator, so that he should administer and sell the same, the right to the marks has also been transferred to him.

That this is also the French theory clearly appears from the judgments of the Tribunal of First

Instance of Grenoble, dated the 23rd day of April, 1904, and of the Court of Appeal of Grenoble dated the 19th of July, 1905, as also from the orders rendered by said Courts on the 4th of February and 12th of December, 1905, respectively. It is to be admitted therefore that the Liquidator having received the business of the defendant, received at the same time the right to the marks attached to such business. 1903

It must also be admitted that the entire business of the defendant was transferred to the plaintiff and that the business carried on by the defendant at the present time in Spain is not the continuation of his previous business, but constitutes a new business. To this the defendant merely replied that he possessed the secret of manufacture and that the plaintiff was not in a position to manufacture the real article in question. It must be admitted that under certain circumstances, a secret of manufacture may exist, the importance of which is such that it settles the question of the transfer of the business and without it there could be no question of transferring a business. 1904

The defendant, however, has failed to make it perfectly clear whether the secret of the Chartreuse was not known in wider circles and that he alone was in possession of the secret. The decision of the French Courts, which hold that the plaintiff is entitled to the mark, go against such claim of the defendant since, according to the statement made by the defendant himself, the plaintiff is in possession of those things—leaving out of the question the alleged secret of manufacture—generally considered necessary to the carrying on of a business. In view of this situation, the defendant, according to par. 9, No. 2, of the law on trademarks, can no longer claim the marks. 1905

1906 The question whether the defendant has managed the business as an agent (Treuhander) or as a person interposed, in his own name, is of no interest as regards the present judgment, for the transfer of the business to the plaintiff, with the rights to the marks of the defendant, has been made sufficiently clear, and there results also therefrom the right of the plaintiff to the transfer of the marks.

The provisional order appears to be found in so far as the same prohibits the defendant from using the marks in question or disposing of the same.
1907 For the probable length of the action might result the loss for the plaintiff, that is to say as regards the entire assets of the Receivership, which it might be difficult to remedy, on account of the nature of the property. On the other hand, he is not authorized to prohibit the defendant from opposing the importation and administration of the products of the Liquidation represented by the plaintiff under said mark. It goes without saying that the defendant should not attain such purpose through illegal means. In the present action, however, the defendant shall be allowed to appeal to the Courts,—a right which was denied him by the order. There-
1908 fore the second part of the order is annulled. The costs of the proceedings shall be borne by the respective parties in so far as judgment may have been given in favor of either.

Signed,

RIECKE, MICHAELLES, DR. NOELDEKE.

1909

Defendant's Exhibit Haan Order Slip.

CUSENIER COMPANY
Importers

110 Broad Street, New York.
Order No. 265 Date Oct. 31/04
Sold to R. M. Haan
Address 1286 Bway
City
Terms Net Cash Ship
Per.....

La Grande Chartreuse

1910

2 Cases Qts. Green 30.50
3 " " Yellow 25.

Less 1.00 per Case
Leonard Dresdner.

Defendant's Exhibit Haan Letter.

R. M. HAAN,
Importer of
Wines, Brandies & Cigars,
1286 Broadway,
New York, Jany. 17th, 1905. 1911

The Cusenier Co.
110 Broad St., N. Y.

Gentlemen:—

Having been served with a copy of an "Injunction Order" from the U. S. Circuit Court issued by Judge E. H. Lacombe, U. S. C. J., restraining me from selling the "Chartreuse" sold me by you I must ask that you send for the same and remove it from my place, as it is of no use to me, and as I bought the Chartreuse from you upon

your representations it is nothing more than right that you do as I request.

I am,
Very truly yours,
R. M. HAAN,
Per Joseph Kay.

Motion.

IN THE UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN, v. CUSENIER COMPANY.	In Equity. No. 8949

To Philip Mauro, Esq.,
Counsel for Complainant,
Tribune Building,
Sir:—

Please take notice that on next motion day, Friday, May 24th, at the call of the motion calendar on that day in this Court in the Post Office Building, New York City, Borough of Manhattan, motion will be made on behalf of defendant for the entering of the accompanying order of which a copy is herewith served upon you, and in support of the motion there will be presented the accompanying affidavit of Hubert Howson, verified May 20th,

1907, of which a copy is also herewith served upon you.

HOWSON & HOWSON.
Solicitors and of Counsel for Defendant.

Service acknowledged this 20th day of May, 1907.

PHILIP MAURO.
Counsel for Complainants.

Proposed Order.

At a stated term of the Circuit Court of the United States for the Southern District of New York, held in the Court Rooms thereof in the Post Office Building, New York City, Borough of Manhattan, before Judge Lacombe, May , 1907.

IN THE UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN, v. CUSENIER COMPANY.	In Equity No. 8949.

Order.

On reading and filing the affidavit of Hubert

1918 Howson, verified May 20th, 1907, and on motion of Counsel for defendant, and counsel for the respective parties having been heard,

It is ordered that defendant have leave to examine Alexandre Millerand and A. J. A. V. S. Guignier, in France, as to the procedure and proofs in 18, 1905 (offered in evidence in this cause by complainants as Exhibit S), and specifically as to whether or not any proof of a secret process of the French action leading to the judgment of May manufacture of Chartreuse or the carrying away of such a secret was offered in that French action

1919 and that defendant have thirty days from the date of this order to take such proofs upon due notice to Mr. Bennet, complainants' counsel in Paris, and under like conditions and stipulations under which evidence has already been taken in France on behalf of the respective parties, and that complainants may have thirty days after the close of such evidence by defendant, within which to take evidence in Paris in rebuttal thereof and under like conditions and stipulations.

.....

1920 U. S. C. J.

IN THE UNITED STATES CIRCUIT COURT, 1921

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN, v. CUEENIER COMPANY.	In Equity No. 8949.

1922

Affidavit.

State of New York, }
County of New York, } ss.:

Hubert Howson, being duly sworn, deposes and says:

I am of counsel for defendant. One of the Exhibits offered in evidence by the complainants is a judgment of the French Court at Grenoble in an action in which the Liquidator claimed that the new label of the Monks was an infringement of the old label and trademarks which the French Courts 1923
had transferred with the business to the Liquidator. That judgment is referred to in this case as the judgment of May 18th, 1905, and as complainant's Exhibits S. That judgment found that the old trademarks and labels had been put into the possession of the Liquidator with the business, and that the new "Péres Chartreux" label adopted by the Monks after their expulsion from France and the establishment of their liqueur business at Tarragone, Spain, was not an infringement of the old trademarks.

1924 A copy of the judgment, Exhibit S, will be submitted to the Court with translation, in connection with this affidavit.

I understand that the plaintiffs are contending in advertisements now issued by them or on their behalf in Great Britain and eleswhere, and that they also propose to contend in this case, that the said judgment of May 18, 1905, is an adjudication that the Péres Chartreuse have kept the secret of manufacture of Chartreux, and that this claim is based on a paragraph in the said judgment which has been translated as follows:

1925

> "Whereas by the application of the law of the 1st of July the trademark of the Grande Chartreuse may very well remain the property of the Liquidator of the dissolved and expelled Congregation, although the secret or process of the manufacture may have been carried away as property incapable of being seized so long as the unpatented process remains unknown and the trademark thus becomes separated from the product which up to that time it had guaranteed."

1926 I am informed and believe it to be true that no evidence was presented in that French action to show that the Carthusian Monks had a secret of manufacture, or that they kept or carried away a secret of manufacture of Chartreuse, and that therefore the said paragraph is not a finding or a judgment of fact, but a hypothetical remark or *obiter dictum.*

I am informed and believe it to be true that Alexandre Millerand, of No. 2 Avenue de Villars, Paris, France, appeared as avocat, and Auguste J. A. V. S. Guignier, of No. 2 Rue Vauban, Grenoble, appeared as avoué for the Liquidator in the

French action leading to the said judgment of May 18, 1905, and conducted the trial of that cause on behalf of the Liquidator. 1927

I am informed and believe it to be true that the practice in the French Courts in cases such as this is for the attorneys or counsel for each side to submit to their adversaries before the trial all documentary evidence which they propose to submit at the trial, and if no objection is made, such documentary evidence goes in without oral proof, and in many cases this documentary evidence constitutes the whole record in the case.

I am also informed and believe it to be true that in the French action leading to the judgment of May 18, 1905, there was no oral testimony heard upon the case whatever, that the evidence on behalf of the Carthusian Monks consisted solely of documentary proofs, which had been submitted to Mr. Millerand or Mr. Guignier or both, before the trial, and which were deposited at the trial with the proper officer of the Court, but that after that litigation was closed, those documentary proofs were returned, as is the custom, to the counsel who had produced them, in evidence, and that so far as known, no copies were retained by the Court or its officers, and that the judgment roll does not contain the evidence or a copy or an abstract of it. 1928 1929

I am informed and believe it to be true that Mr. Millerand and Mr. Guignier are prepared to testify that the French procedure with regard to proofs in the said French action was as above stated; that all documents offered in evidence on behalf of the Monks in that action were necessarily submitted before the trial to Mr. Millerand or Mr. Guignier; that no oral proof was offered in the action; and

1479

1930 that no attempt was made on behalf of the Carthusian Monks in that action to make proof of the existence of a secret or the carrying away of a secret of manufacture of Chartreuse.

HUBERT HOWSON.

Sworn to and subscribed before me this 20th day of May, 1907.

Walter Abbe,
Notary Public.

1931 **Judge Lacombe's Memorandum Opinion.**

I am very clearly of the opinion that nothing should be introduced here in connection with the judgment, except what would be the equivalent of what we call the "judgment roll." If there be such documents of record in France, properly authenticated copies may be introduced, but it would be imporper to call ear witnesses, even if they be counsel, to testify to what may be their recollection of the transactions.

1932 Motion denied.
June 10, 1907.

E. H. LACOMBE,
U. S. C. J.

1480

IN THE UNITED STATES CIRCUIT COURT, 1933

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN,

v.

CUSENIER COMPANY,

In Equity.
No. 8949.

1934

On reading and filing defendant's motion papers for leave to take testimony abroad to prove the record in the French action leading to the judgment of May 18, 1905, and counsel for the respective parties having been heard, it is

Ordered that said motion be, and it hereby is, denied

E. H. LACOMBE,
U. S. C. J.

Form and entry of foregoing order approved.

1935

Philip Mauro,

Of Counsel for Complainants.

BULLETIN DES LOIS
DE LA RÉPUBLIQUE FRANÇAISE
No. 2295.

RÉPUBLIQUE FRANÇAISE.

No. 10,484. Loi relative au contrat d'association.

Du 1er Juillet 1901.

(Promulguée au *Journal officiel* du 2 juillet 1901.)

Le Sénat et la Chambre des Députés ont adopté,
Le Président de la République promulgue la loi dont la teneur suit :

TITRE I.

Art. 1. L'association est la convention par laquelle deux ou plusieurs personnes mettent en commun d'une façon permanente leurs connaissances ou leur activité dans un but autre que de partager des bénéfices. Elle est régie, quant à sa validité, par les principes généraux du droit applicables aux contrats et obligations.

Art. 2. Les associations de personnes pourront se former librement sans autorisation ni déclaration préalable, mais elles ne jouiront de la capacité juridique que si elles se sont conformées aux dispositions de l'article 5.

Art. 3. Toute association fondée sur une cause ou en vue d'un objet illicite, contraire aux lois, aux bonnes mœurs, ou qui aurait pour but de porter atteinte à l'intégrité du territoire national et à la forme républicaine du Gouvernement, est nulle et de nul effet.

Art. 4. Tout membre d'une association qui n'est pas formée pour un temps déterminé peut s'en retirer en tout temps, après payement des cotisations échues et de l'année courante, nonobstant toute clause contraire.

Art. 5. Toute association qui voudra obtenir la capacité juridique prévue par l'article 6 devra être rendue publique par les soins de ses fondateurs.

La déclaration préalable en sera faite à la préfecture du département ou à la sous-préfecture de l'arrondissement où l'association aura son siège social. Elle fera connaître le titre et l'objet de l'association, le siège de ses établissements et les noms, professions et domiciles de ceux qui, à un titre quelconque, sont chargés de son administration ou de sa direction. Il en sera donné récépissé.

Deux exemplaires des statuts seront joints à la déclaration.

Les associations sont tenues de faire connaître, dans les trois mois, tous les changements survenus dans leur administration ou direction, ainsi que toutes les modifications apportées à leurs statuts.

Ces modifications et changements ne sont opposables aux tiers qu' à partir du jour où ils auront été déclarés.

Les modifications et changements seront, en outre, consignés sur un registre spécial qui devra être présenté aux autorités administratives ou judiciaires chaque fois qu'elles en feront la demande.

Art. 6. Toute association régulièrement déclarée peut, sans aucune autorisation spéciale, ester en justice, acquérir à titre onéreux, posséder et administrer, en dehors des subventions de l'Etat, des départements et des communes:

1. Les cotisations de ses membres ou les sommes au moyen desquelles ces cotisations ont été rédimés, ces sommes ne pouvant pas être supérieures à cinq cents francs (500 fr.) :

2. Le local destiné à l'administration de l'association et à la réunion de ses membres:

3. Les immeubles strictement nécessaires à l'accomplissement du but qu'elle se propose.

Art. 7. En cas de nullité prévue par l'article 3, la dissolution de l'association sera prononcée par le tribunal civil, soit à la requête de tout intéressé soit à la diligence du ministère public.

En cas d'infraction aux dispositions de l'article 5, la dissolution pourra être prononcée à la requête de tout interessé ou du ministère public.

Art. 8. Seront punis d'une amende de seize à deux cents francs (16 à 200 fr.), et, en cas de récidive, d'une amende double, ceux qui auront contrevenu aux dispositions de l'article 5.

Seront punis d'une amende de seize à cinq mille francs

(16 à 5,000 fr.), et d'un emprisonnement de six jours à un an, les fondateurs, directeurs ou administrateurs de l'association qui se serait maintenue ou reconstituée illégalement après le jugement de dissolution.

Seront punies de la même peine toutes les personnes qui auront favorisé la réunion des membres de l'association dissoute, en consentant l'usage d'un local dont elles disposent.

Art. 9. En cas de dissolution volontaire, statutaire ou prononcée par justice, les biens de l'association seront devolus conformément aux statuts, ou, à défaut de disposition statutaire, suivant les règles déterminées en assemblée générale.

TITRE II.

Art. 10. Les associations peuvent être reconnues d'utilité publique par décrets rendus en la forme des réglements d'administration publique.

Art. 11. Ces associations peuvent faire tous les actes de la vie civile qui ne sont pas interdits par leurs statuts, mais elles ne peuvent posséder ou acquérir d'autres immeubles que ceux nécessaires au but qu'elles se proposent. Toutes les valeurs mobilières d'une association doivent être placées en titres nominatifs.

Elles peuvent recevoir des dons et des legs dans les conditions prévues par l'article 910, du code civil et l'article 5, de la loi du 4 février, 1901. Les immeubles compris dans un acte de donation ou dans une disposition testamentaire qui ne seraient pas nécessaires au fonctionnement de l'association sont aliénés dans les délais et la forme prescrits par le décret ou l'arrêté qui autorise l'acception de la libéralité; le prix en est versé à la caisse de l'association.

Elles ne peuvent accepter une donation mobilière ou immobilière avec réserve d'usufruct au profit du donateur.

Art. 12. Les associations composées en majeure partie d'étrangers, celles ayant des administrateurs étrangers ou leur siège à l'étranger, et dont les agissements seraient de nature soit à fausser les conditions normales du marché des valeurs ou des merchandises, soit à menacer la sûreté intérieure ou extérieure de l'Etat, dans les conditions prévues par les articles 75 à 101 du code pénal, pourront être dissoutes par décret du Président de la République, rendu en conseil des ministres.

Les fondateures, directeurs ou administrateurs de l'association qui se serait maintenue ou reconstituée illégalement après le décret de dissolution seront punies des peines portées par l'article 8, paragraphe 2.

TITRE III.

Art. 13. Aucune congrégation religieuse ne peut se former sans une autorisation donnée par une loi qui déterminera les conditions de son fonctionnement.

Elle ne pourra fonder aucun nouvel établissement qu'en vertu d'un décret rendu en conseil d'Etat.

La dissolution de la congrégation ou la fermeture de tout établissement pourront être prononcées par décret rendu en conseil des ministres.

Art. 14. Nul n'est admis à diriger, soit directement, soit par personne interposée, un établissement d'enseignement, de quelque ordre qu'il soit, ni à y donner l'enseignement, s'il appartient à une congrégation religieuse non autorisée.

Les contrevenants seront punis des peines prévues par l'article 8, paragraphe 2. La fermeture de l'établissement pourra, en outre, être prononcée par le jugement de condamnation.

Art. 15. Toute congrégation religieuse tient un état de ses recettes et dépenses; elle dresse chaque année le compte financier de l'année écoulée et l'état inventorié de ses biens meubles et immeubles.

La liste complète de ses membres, mentionnant leur nom patronymique, ainsi que le nom sous lequel ils sont désignés dans la congrégation, leurs nationalité, âge et lieu de naissance, la date de leur entrée doit se trouver au siège de la congrégation.

Celle-ci est tenue de représenter sans déplacement, sur toute réquisition du préfet, à lui-même ou à son délégué, les comptes, états et listes ci-dessus indiqués.

Seront punis des peines portées au paragraphe 2 de l'article 8 les représentants ou directeurs d'une congrégation qui auront fait des communications mensongères ou refusé d'obtempérer aux réquisitions du préfet dans les cas prévus par le présent article.

Art. 16. Toute congrégation formée sans autorisation sera déclarée illicite.

Ceux qui en auront fait partie seront punis des peines édictées à l'article 8, paragraphe 2.

La peine applicable aux fondateurs ou administrateurs sera portée au double.

Art. 17. Sont nuls tous actes entre vifs ou testamentaires, à titre onéreux ou gratuit, accomplis soit directement, soit par personne interposée, ou toute autre voie indirecte, ayant pour objet de permettre aux associations légalement ou illégalement formées de se soustraire aux dispositions des articles 2, 6, 9, 11, 13, 14 et 16.

Sont légalement présumées personnes interposées au profit des congrégations religieuses, mais sous réserve de la preuve contraire:

1. Les associés à qui ont été consenties des ventes ou fait des dons ou legs, à moins, s'il s'agit de dons ou legs, que le bénéficiaire ne soit l'héritier en ligne directe du disposant;

2. L'associé ou la société civile ou commerciale composée en tout ou partie de membres de la congrégation, propriétaire de tout immeuble occupé par l'association;

3. Le propriétaire de tout immeuble occupé par l'association, après qu'elle aura été déclarée illicite.

La nullité pourra être prononcée soit à la diligence du ministère public, soit à la requête de tout intéressé.

Art. 18. Les congrégations existantes au moment de la promulgation de la présente loi, qui n'auraient pas été antérieurement autorisées ou reconnues, devront, dans le délai de trois mois, justifier qu'elles ont fait les diligences nécessaires pour se conformer à ses prescriptions.

A défaut de cette justification, elles sont réputées dissoutes de plein droit. Il en sera de même des congrégations auxquelles l'autorisation aura été refusée.

La liquidation des biens détenus par elles aura lieu en justice. Le tribunal, à la requête du ministère public, nommera, pour y procéder, un liquidateur qui aura, pendant toute la durée de la liquidation, tous les pouvoirs d'un administrateur séquestre.

Le jugement ordonnant la liquidation sera rendu public dans la forme prescrite pour les annonces légales.

Les biens et valeurs appartenant aux membres de la congrégation antérieurement à leur entrée dans la congrégation, ou qui leur seraient échus depuis, soit par succession *ab intestat* en ligne directe ou collatérale, soit par donation ou legs en ligne directe, leur seront restitués.

Les dons et legs qui leur auraient été faits autrement qu'en ligne directe pourront être également revendiqués, mais a charge par les bénéficiaires de faire la preuve qu'ils n'ont pas été les personnes interposées prévues par l'article 17.

Les biens et valeurs acquis à titre gratuit et qui n'auraient pas été spécialement affectés par l'acte de libéralité à une œuvre d'assistance pourront être revendiqués par le donateur, ses héritiers ou ayants droit du testateur, sans qu'il puisse leur être opposé aucune prescription pour le temps écoulé avant le jugement prononçant la liquidation.

Si les biens et valeurs ont été donnés ou légués en vue de gratifier non les congréganistes, mais de pourvoir à une œuvre d'assistance, ils ne pourront être revendiqués qu'à charge de pourvoir à l'accomplissement du but assigné à la libéralité.

Toute action en reprise ou revendication devra, à peine de forclusion, être formée contre le liquidateur dans le

délai de six mois à partir de la publication du jugement. Les jugements rendus contradictoirement avec le liquidateur, et ayant acquis l'autorité de la chose jugée, sont opposables à tous les intéressés.

Passé le délai de six mois, le liquidateur procédera à la vente en justice de tous les immeubles qui n'auraient pas été revendiqués ou qui ne seraient pas affectés à une œuvre d'assistance.

Le produit de la vente, ainsi que toutes les valeurs mobilières sera déposé à la Caisse des dépôts et consignations.

L'entretien des pauvres hospitalisés sera, jusqu'à l'achèvement de la liquidation, considéré comme frais privilégiés de liquidation.

S'il n'y a pas de contestation ou lorsque toutes les actions formées dans le délai prescrit auront été jugées, l'actif net est réparti entre les ayants droit.

Leréglement d'administration publique visé par l'article 20 de la présent loi déterminera, sur l'actif resté libre après le prélèvement ci-dessus prévu, l'allocation en capital ou sous forme de rente viagère, qui sera attribuée aux membres de la congrégation dissoute qui n'auraient pas de moyens d'existance assurés ou qui justifieraient avoir contribué à l'acquisition des valeurs mises en distribution par le produit de leur travail personnel.

Art. 19. Les dispositions de l'article 463 du code pénal sont applicables aux délits prévus par la présente loi.

Art. 20. Un règlement d'administration publique déterminera les mesures propres à assurer l'exécution de la présente loi.

Art. 21. Sont abrogés les articles 291, 292, 293 du code pénal, ainsi que les dispositions de l'article 294 du même code relatives aux associations; l'article 20 de l'ordonnance du 5-8 juillet, 1820; la loi du 10 avril, 1834; l'article 13 du décret du 28 juillet, 1848; l'article 7 de la loi du 30 juin, 1881; la loi du 14 mars, 1872; le paragraphe 2, article 2, de la loi du 24 mai, 1825; le décret du 31 janvier, 1852, et généralement toutes les dispositions contraires à la présente loi.

Il n'est en rien dérogée pour l'avenir aux lois spéciales relatives aux syndicats professionnels, aux sociétés de commerce et aux sociétés de secours mutuels.

La présente loi, délibéré et adoptée par le Senat et par la Chambre des députés, sera exécutée comme loi de l'Etat.

Fait à Paris, le 1er Juillet, 1901.

Signé: Émile Loubet.

Le Président du Conseil,
Ministre de l'intérieur et des cultes,
Signé: WALDECK-ROUSSEAU.

TRANSLATION.

—1273—

BULLETIN OF THE LAWS OF THE FRENCH REPUBLIC

No. 2295.

FRENCH REPUBLIC.

No. 10,484. Law Relating to the Contract of Association,

Of the 1st July, 1901.

(Promulgated in the *Official Journal* of 2nd July, 1901.)

THE SENATE AND THE CHAMBER OF DEPUTIES HAVE ADOPTED:

THE PRESIDENT OF THE REPUBLIC PROMULGATES THE LAW, THE TEXT OF WHICH IS AS FOLLOWS:

Title I.

Art. 1. An association is the agreement by which two or more persons unite in common in a permanent way their attainments or their activity for a purpose other than for profit. It is regulated as to its validity by the general principles of law applicable to contracts and obligations.

Art. 2. Associations of persons may be formed freely without authorization or previous declaration, but they shall enjoy legal capacity only if they conform to the requirements of Art. 5.

Art. 3. Every association founded on a cause or with an object unlawful or contrary to the laws or to good morals, or which may have for its purpose to strike a blow at the integrity of the national territory and the republican form of Government, is void and of no effect.

Art. 4. Every member of an association which is not formed for a definite period may withdraw at any time upon payment of past dues and for the current year, notwithstanding any provision to the contrary.

Art. 5. Every association which desires to acquire legal capacity provided for by Article 6 should be rendered public through the care of its founders.

Previous declarations of it shall be made to the Prefecture of the Department or to the sub-prefecture of the arrondisement where the association shall have its principal domicile. It shall make known the title and the purpose of the association, the location of its establishment, and the names, professions and residences of those who have, under whatever title, charge of the administration or of its direction. A receipt shall be given for it.

Two copies of the by-laws shall be annexed to the declaration.

Associations are required to make known, within three months, all changes made in their administration or direction, as well as all modifications made in their by-laws.

These modifications and changes are binding on a third party only from the day when they shall have been declared.

In addition the modifications and changes shall be entered on a special register which must be presented to the administrative or judicial authorities whenever required.

Art. 6. Every association regularly declared can, without any special authorization, appear in court, acquire title, possess and administer, without the aid of the State, Departments and Communes:

1. The dues of its members or the sums by means of which these dues have been redeemed, these sums not being over five hundred francs (500 fr.):

2. The premises intended for the administration of the association and the reunion of its members:

3. The real estate strictly necessary to carry out the purpose for which it is founded.

Art. 7. In case of nullity, provided by Article 3, the dissolution of the association shall be pronounced by the Civil Tribunal either at the instance of an interested party or at the instance of the public ministry.

In case of infraction of the provisions of Article 5, the dissolution shall be pronounced at the instance of any interested party or of the public ministry.

Art. 8. Those who have violated the conditions of Art. 5 shall be punished by a fine of sixteen to two hundred francs (16 to 200 fr.), and in case of a second offence a double fine.

The founders, directors or administrators of the asso-

ciation which shall be maintained or reconstituted illegally after the judgment of dissolution shall be punished with a fine of from sixteen to five thousand francs (16 to 5,000 fr.), and an imprisonment of from six days to one year.

All persons who have aided the reunion of the members of the dissolved association by consenting to the use of a place which they control shall be punished in like manner.

Art. 9. In case of dissolution, either voluntary, by act of law, or by order of court, the property of the association shall be disposed of according to the laws or in default of statutory disposition according to the rules determined in general assembly.

Title II.

Art. 10. Associations may be recognized as of public service by decree rendered in the form of rules of public administration.

Art. 11. These associations may do all acts in civil life which are not forbidden by their by-laws, but they cannot possess or acquire any other property than what is necessary for the purpose for which they were proposed. All transferable securities of an association must be placed in personal titles.

They may receive gifts and legacies under the conditions provided by Article 910 of the Civil Code and Article 5 of the law of February 4, 1901. Real property included in a gift or in a testamentry disposition which shall not be necessary for the purposes of the association, are to be sold within the time and form prescribed by the decree or order which authorizes the acceptance of the gift; the money is then turned into the funds of the association.

They cannot receive a gift of personal or real property with a reservation of usufruct for the benefit of the donor.

Art. 12. Associations composed in the major part of foreigners, those having foreign administrators, or their domicile in a foreign country, or whose acts shall be of a nature either to affect the normal conditions of sale of securities or merchandise, or to menace the internal safety of the State, under the conditions set forth in Articles 75 to 101 of the Penal Code, may be dissolved by decree of the President of the Republic rendered in counsel with his administrators.

The founders, directors, or administrators of the association which shall be maintained or reconstitued illegally after the decree of dissolution shall be punished with the penalties provided by Article 8, Paragraph 2.

Title III.

Art. 13. No religious congregation can be formed without an authorization given by a law which shall determine the conditions under which it is to be carried on.

No new establishment can be founded except by virtue of a decree rendered at a Council of State.

The dissolution of the congregation or the closing of any establishment may be pronounced by decree rendered at a Council of Ministers.

Art. 14. No one is permitted to direct either directly or through an interposed party any establishment for teaching of whatever kind, or to give instruction there, if it belong to an unauthorized religious congregation.

Offenders shall be punished with penalties provided by Article 8, Paragraph 2.

The closing of the establishment shall, moreover, be pronounced by the order of condemnation.

Art. 15. Every religious congregation must keep account of its receipts and its expenses; it must make up each year the financial statement for the previous year and the inventoried condition of its personal and real property.

The complete list of its members, mentioning their patronymic name as well as the name under which they are designated in the congregation, their nationality, age, and place of birth, the date of their entry, should be kept at the domicile of the congregation.

The latter is required to present, without alteration, upon any requisition of the Prefect, to himself, or to his representative, the accounts, statements, and lists above indicated.

The representatives or directors of a congregation who shall have made false communication, or refused to submit to the requirements of the Prefect in the cases provided by the present article, shall be punished with penalties set forth in Paragraph 2, Article 8.

Art. 16. Every congregation formed without authorization shall be declared illegal.

Those who have taken part in it shall be punished with the penalties set forth in Article 8, Paragraph 2.

The penalty applicable to founders and administrators shall be double.

Art. 17. All deeds between living persons or testamentary deeds, for a consideration or gratuitous, accomplished either directly or through an interposed party, or by any other indirect way, having for their purpose to permit associations, either legally or illegally formed, to evade the conditions of Articles 2, 6, 9, 11, 13, 14 and 16, are void.

The following are legally presumed to be persons interposed for the benefit of religious congregations, but sub-

1. Members to whom sales have been made, or gifts, or legacies, unless, in the case of gifts or legacies, the beneficiary to be the heir in direct line of the donor;

2. The member or civil or commercial company composed in whole or in part of members of the congregation, owner of any real property occupied by the association;

3. The owner of any real property occupied by the association after it has been declared illegal.

Nullity may be pronounced either on the application of the public minister or at the request of any interested party.

Art. 18. Congregations existing at the time of the promulgation of this law, who have not been previously authorized or recognized, must within the delay of three months prove that they have taken the necessary steps to conform themselves to its requirements.

In default of this justification they are to be deemed dissolved wholly. It shall be the same with reference to congregations to which authorization shall have been refused.

The liquidation of the property held by them shall be effected by the courts. The tribunal at the request of the public minister shall appoint for that purpose a liquidator who during the entire period of the liquidation shall have all the powers of a sequestrating administrator (Receiver).

The judgment ordering the liquidation shall be published in the form prescribed for legal announcements.

Property belonging to the members of the congregation before their entry into the congregation, or which may have come to them since, either by inheritance from an intestate in the direct or collateral line, or by donation or legacy in the direct line, shall be restored to them.

The gifts and legacies which shall have been made to them otherwise than in the direct line may also be claimed by them, but subject to proof by the beneficiaries that they have not been persons interposed as contemplated by Article 17.

Property acquired by gift or legacy and which has not been specially applied by the gift or legacy to charitable work, may be claimed by the donor, his heirs, or legal representatives, without any limitation for the period elapsed before the judgment pronouncing the liquidation.

If the property has been given or bequeathed not with the view of benefiting the congregation, but in support of a charitable work, it may be claimed only on the condition of undertaking to carry out the purpose intended for the gift.

Every action for taking back or reclaiming should, on pain of foreclosure, be taken against the liquidator within

six months from the publication of the judgment. Judgments rendered against the liquidator and having acquired the effect of a thing adjudicated, may be opposed to all interested parties.

After a delay of six months the liquidator shall proceed to a judicial sale of all the real estate which has not been claimed or which has not been applied to a charitable work.

The proceeds of the sale as well as all personal property shall be deposited in the court.

The care of hospitals for the poor up to the close of the liquidation shall be considered as privileged expenses of the liquidation.

If there is no contest, or when all the actions brought within the prescribed delay shall have been adjudicated, the net assets shall be distributed among those having right to them.

The rule of public administration covered by Article 20 of the present law shall determine, as to the assets remaining over after the deduction above provided, the allowance in principal or in income which shall be given to the members of the dissolved congregation who shall have no assured means of subsistence or who shall prove that they have contributed to the acquisition of the proceeds under distribution by the product of their personal work.

Art. 19. The provisions of Article 463 of the Penal Code are applicable to offences contemplated by the present law.

Art. 20. A regulation of public administration shall determine the measures necessary to insure the carrying out of the present law.

Art. 21. Are abrogated Articles 291, 292, 293, of the Penal Code, as well as the provisions of Article 294 of the same Code relating to associations; Article 20 of the Order of 5-8 July, 1820; the law 10th of April, 1834; Article 13 of the Decree of July 28, 1848; Article 7 of the law of 30th June, 1881; the law of the 14th of March, 1872; Paragraph 2, Article 2 of the law 24th May, 1825; the Decree of the 31st of January, 1852; and generally all provisions contrary to the present law.

It shall not affect for the future special laws relating to professional syndicates, commercial companies, or mutual aid societies.

The present law deliberated and adopted by the Senate and by the Chamber of Deputies shall be executed as the law of the State.

Done at Paris, the 1st of July, 1901.

(Signed) EMILE LOUBET.

President of the Council,
Minister of the Interior and Cults.

Signed: WALDECK-ROUSSEAU.

1939

In the United States Circuit Court.

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN v. CUSENIER COMPANY.	In Equity No. 8949.

1940

Stipulation.

This Court, having granted defendant leave to offer as additional evidence in this cause certified copy of the Judgment of the Tunis Court, dated May 11th, 1907, in the action there of Rey against Lecounturier, and also the Judgments of the Court of First Instance at Grenoble, severally dated March 31st, 1903, April 23, 1904, and May 17, 1904, the latter two in the action there of Lecounturier v. Rey with translations.

1941

It is stipulated and agreed that the accompanying certified copies of those several Judgments and the translations thereof into English may be taken as having been duly offered in evidence in this cause, subject to objection by complainants for

1496

1948 gregation of Carthusian Monks, in order to hear the Court pronounce the nullity of the registration effected in Tunisia of the trademarks No. 4,182 and 4,797, said marks registered on the 22nd day of September, 1905, at the International Office of Industrial Property at Berne;

Whereas the Abbe Rey died prior to the serving of said summons and complaint, and the Abbe Albert Rey, acting in his capacity as sole and only heir of the original plaintiff, has resumed the suit begun by the latter and requests the Court to render a judgment in accordance with the conclusions set forth in said summons and complaint;

1949 Whereas in accordance with a document served on the 10th day of January 1907, the Compagnie Fermiere de la Grande Chartreuse, which had meanwhile purchased the business and marks of the products of the Grande Chartreuse, upon proceedings instituted by Lecouturier in his official capacity, intervened in the present suit and requested the Court to put upon record that, in virtue of the purchase hereinabove mentioned, the said Company is and remains substituted for Lecouturier;

Whereas the latter asks that the action be dismissed in so far as he is concerned;

1950 Whereas the aforesaid intervention is regular, and the plaintiff in no wise contests its regularity; whereas it is therefore advisable to put upon record the various declarations of the parties, and to declare the action dismissed in so far as concerns Lecouturier, so that the question at issue shall be entirely as between Albert Rey, Plaintiff, and the Compagnie Fermiere de la Grande Chartreuse, party intervening;

Whereas the plaintiff declares that he is the owner in right of his relative, the Abbe Marius Celestin Rey, of a certain number of tradesmarks re-

lating to liqueurs and other products designated in a general way under the name of products of the Grand Chartreuse, transferred to the said Marius Celestin Rey by Mr. Grezier, deceased, who was himself the proprietor thereof since the 9th day of December, 1871; whereas he alleges that in virtue of the usage of such marks by said proprietors thereof and of the possession of the said marks in Tunisia, he has a right to ask the Court to declare the registration effected by Lecouturier as null and void in Tunisia; 1951

Whereas the pleas upon which he bases his claim may be sunmmarized briefly as follows: Lecouturier, and thereafter the Compagnie Fermiere became owners of the marks in question by reason of the application of the law of the 1st of July, 1901, to the Congregation of Carthusian Monks; this law which is a law of police and safety, cannot be applied outside the continental territory of France, and therefore is without force and effect in Tunisia; consequently the Compagnie Fermiere cannot invoke such law against the rights acquired by him and by his relative in this country; 1952

Whereas in order to examine the value of this contention it is necessary to refer to the principles which govern trademarks;

Whereas one of the most assured of such principles is that trademarks are an accessory of the industrial or commercial establishment of which they designate the products; whereas it follows from such principle that this right to the mark is indissolubly bound to the business to which it is attached; whereas, consequently, it is admitted that the ownership of the mark follows the fate of the establishment in which the product is manufactured, and passes, if there is no stipulation to the contrary with such establishment, into the pos- 1953

1954 session of the party acquiring the business, of which it constitutes one of the elements;

Whereas this principle cannot be contested, for to admit the contrary would be equivalent to admitting that a single mark could at the same time protect two distinct products having a different origin; whereas it results therefrom that a mark registered in France and in other foreign countries cannot constitute as many distinct rights as there are countries in which such registration has been effected;

Whereas the foregoing rule has been sanctioned by various international treaties having for object
1955 the reciprocal protection of trademarks; whereas it is decided as above by the international convention of the 20th of March, 1883, which stipulates that any trademark regularly registered in its country of origin is admitted to registration and is protected in all the other countries party to the treaty;

Whereas this principle being established, the right to the mark which is a movable incorporal right attached to the establishment of which the mark is accessory, is assuredly situated in the country of such establishment;

1956 Whereas the Societe Fermiere de la Grande-Chartreuse, was, in virtue of a judgment of the Civil Tribunal of Grenoble dated the 30th day of June, 1906, the highest bidder, and did acquire the business and the marks of the products exploited at the Grand Chartreuse and at Fourvoirie, and whereas the property, to wit, the marks of the Chartreuse, has its origin in France, as being attached to an establishment having its principal place of business in France; whereas it should be considered therefore as property situated in France, and that the right to use such marks belongs to the party purchasing them and may be

exercised both in France and in foreign countries bound by the Convention of 1883; 1957

Whereas the contrary opinion cannot be conceived, for the result thereof would be that trademarks indicating that products had been manufactured at the Grande Chartreuse might be affixed to products manufactured abroad;

Whereas, further, the plaintiff himself understands this so well that he has been careful to create a new trademark for the products of the Carthusian Monks manufactured abroad, such new mark being absolutely distinct from that attached to the establishment of the Grande Chartreuse and of Fourvoirie; he has further taken care to duly 1958 register said new mark so that if his contention were admitted he would have the faculty to sell the same product under two different trademarks;

Whereas it results from the consideration hereinabove developed that the plaintiff has no grounds for making opposition to the usage in Tunisia by the defendant Company of the marks in litigation; that the contention upon which the plaintiff bases his claim, to wit, that the law of the 1st of July 1901, is not applicable to Tunisia, becomes therefore of no value; whereas, in fact, it is not for the Tribunal to decide whether this law, notwithstanding 1959 its character of law of police and safety, has effect outside of the continental territory of France; whereas it is necessary simply to state that the examination of the rules derived from the recognized principles in the matter, shows that the Compagnie Fermiere, which has purchased in France the business formerly exploited by the Carthusian Monks, or by the Abbe Marius Celestin Rey in their behalf, became at the same time owner of the marks attached to said business, and is entitled to place, even in Tunisia, the products which

1960 it manufactures under the protection of said marks;

Whereas in view of the foregoing consideration, it would be superfluous to examine the question as to whether the Abbe Albert Rey, plaintiff in the present suit, is qualified to act as such; that he would object that the right of ownership which he invokes belongs to him as having inherited such right from Marius Celestin Rey, who, he declares, was unquestionably the holder thereof; that an objection of this nature would be idle; that a judgment of the Civil Tribunal of Grenoble has decided that such right of ownership did not in reality
1961 belong to Marius Celestin Rey; that it is in no wise necessary to examine the question as to whether said judgment is based upon the law of the law of July, 1901;

Whereas the decision aforesaid has in France the force of *res judicata*, and the French Courts in Tunisia—country placed under the French protectorate—which exercise jurisdiction there in the name of the sovereignty of the French People, cannot be considered as foreign tribunals in so far as concerns a judgment rendered by a Court sitting in the continental territory of the Republic; that
1962 such decision when it became definitive, should therefore be considered as having all the value of *res judicata* for these Courts;

Whereas from this point of view alone, the demand of the plaintiff should be dismissed on the ground that he had no right to bring the present suit;

Whereas the Compagnie Fermiere de la Grande Chartrense makes a counterclaim and asks that the Abbe Rey be ordered to pay ten thousand francs damages; whereas the Company declares that owing to the unjustifiable seizures effected

by him or by his relative, it has been unable to 1963
sell any of its products in Tunisia;

Whereas it seems certain that the defendant has, through the action of the plaintiff, been unable to carry on business and to obtain the profits therefrom upon which it had the right to count; but whereas the said Company produces no element which would allow of the Tribunal's estimating the importance of the prejudice it has suffered, and whereas it is fit to reserve to said Company all its rights on this point:

WHEREFORE.

The Court, judging in first instance, and the parties having duly appeared and pleaded, accepts 1964
the intervention of the Compagnie Fermiere de la Grande Chartreuse, dismisses the action purely and simply in so far as Lecouturier is concerned, declares the demands, arguments and conclusions of Albert Rey without sufficient grounds, and dismisses them; declares, consequently, that the aforesaid Company alone has the right to use in Tunisia the trademarks registered by Lecouturier in his aforesaid capacity, and of which Albert Rey demands the cancellation; dismisses in the present cause the demand of the Compagnie Fermiere de la Grande Chartreuse for damages, but reserves 1965
to said Company all its rights on this point, subject to its producing the necessary proof; orders Albet Rey to pay all costs amounting to..... in this not included the cost of the minute of the present judgment, etc., the legal proportion of which shall be paid to Maitre Vignale.

Ordered, adjudged and decreed the day, month and year first above written, by Messrs. Dramard, Vice-President, and Villatte and Court, Judges.

In the presence of Mr. Vaissie, "substitut" of the Procurator of the Republic, occupying the seat

1966 of the "Ministere Public," assisted by Mr. Dufour, clerk of the Court.

And the minute of the present judgment has been signed by the Vice-President and by the Clerk of the Court. Thus: Monsieur Dramard, Vice-President, Monsieur Dufour, Clerk of the Court.

In the margin of the present judgment is written the following notice of registration:

Registered at Tunis this twenty-first day of May one thousand nine hundred and seven, folio 86, case 15, received 5 francs.

(Signed) OGIVRY.

1967 A true copy.

Exhibit Judgment March 31, 1903.

TRANSLATION.

31 March, 1903, Judgment on Petition.

1968 (Seal of the French Republic)

Extract from the Court Records of the Civil Tribunal of First Instance of the Arrondisement of Grenoble (Isere).

FRENCH REPUBLIC.

IN THE NAME OF THE FRENCH PEOPLE.

The first chamber of the Civil Tribunal of first instance of the Arrondisement of Grenoble (Isere) has rendered at its public session held March 31, 1903, the judgment, the tenor of which follows the report as hereinafter.

TO THE PRESIDENT AND JUDGES COMPOSING THE TRIBUNAL OF FIRST INSTANCE OF GRENOBLE: 1969

The Procurer of the Republic has the honor to show:

That the association known under the name of Chartreux, a non-authorized religious congregation whose principal monastery is situated at St. Pierre de Chartreuse in the jurisdiction of this Tribunal has been refused the authorization which is solicited (session of the Chamber of Deputies of March 26, 1903, official Journal of the 27th,) that under the terms of article 18, paragraph 2 of the law of July 1, 1901, it is held dissolved by law 1970
since 28th March; it is therefore necessary to proceed in conformity with the said article to the judicial liquidation of all property held by it whether at the site of the principal monastery or at the different establishments belonging to it; that it is proper to confide to one and the same sequestrating administrator the liquidation of said properties in their entirety.

In view of articles 13, 16 and 18 of the law of July 1, 1901:

In view of the decree of August 16, 1901, passed for the execution of this law:

1971

The undersigned requests that it please you to name M. Henri Lecouturier, judicial administrator of the Tribunal of the Seine, rue de Pont Neuf, 16, sequestrating administrator and Liquidator of the property of the Congregation called des Chartreux, not only the properties situated and held at the principal monastery at St. Pierre de Chartreuse, but also those held by the said Congregation in France at its different establishments.

To decree that the present judgment shall be published under the care of the Public Prosecutor by means of an insertion in the Journal of Gren-

1972 oble. in which are inserted the legal notices, and in one of the journals published in each arrondisement in which the Congregation of the Chartreux possesses an establishment.

Done at Parquet March 31, 1903.

The Procurer of the Republic,
(Signed) REAUME.

Monsieur Gubian, Judge, is appointed to report.
At the Palace at Grenoble, March 31, 1903.
For the absent President,
Signed: GANNON, Presiding Judge.

1973

JUDGMENT.

In view of the petition presented to the Court by Mons. the Procurer of the Republic:

Having heard Mons. Gubian, Judge Commissioner, in his report:

Whereas it results from the documents produced that the religious congregation known under the name of Chartreux, of which the principal house is situated at St. Pierre de Chartreuse within the jurisdiction of this Court has been refused the au-
1974 thorization which it solicited: that under the terms of the article 18 of the law of July 1, 1901, it is held dissolved by law from the 28th of March;

Whereas by the terms of the same article 18, it is necessary to proceed to the judicial liquidation of all the properties held by it in France; that it is proper in the common interests of all having rights, to confide the liquidation of the properties to a single sequestrating administrator, as the Public Minister asks:

Therefore, in view of articles 13, 16 and 18 of the law of July 1, 1901:

In view of the decree of August 16, 1901, passed 1975
for the carrying out of this law:

The Court names Mons. Henri Lecouturier, judicial administrator of the Tribunal of the Seine, sequestrating administrator and liquidator of the properties of the so-called Congregation of the Chartreux, both the properties situated and held at the main house at St. Pierre des Chartreuse, and also those held by the said Congregation in its different establishments.

Orders that the present judgment shall be published under the care of the Public Prosecutor by means of an insertion in the *Petit Dauphinois,* and 1976
in one of the journals designated to receive the legal insertions in each of the arrondisements of the situation of the properties if necessary.

Authorizes the employment of expenses of liquidation to be advanced by the public Treasury, in conformity with the provisions of article 4 of the decree of Aug. 16, 1901, and of article 121 of the decree of June 18, 1811.

Thus adjudged and pronounced at public hearing by the first Chamber of the Civil Tribunal of first instance of the Arrondisement of Grenoble (Isere) in the ordinary hall of its sessions at the Palace of Justice, place St. Andre, the day, month and year 1977
above noted.

There were present:

Messrs. GANNON, Judge, acting President.
GUBIAN, Judge.
LAURIAN, Judge Suppliant, acting for the titular President, and Judges absent.

1978 In the presence of Monsieur Chaudet, substitute for Mons. the Procurer of the Republic, assisted by Garnier, Clerk.

(Signed) GANNON, Presiding Judge and Garnier, Clerk

Vice for the Registry stamp at Grenoble March 31, 1903, folio 47, case 8; fees, 16 francs, 18 centimes.

Signed, BEGOU, Receiver.

1979 Consequently the President of the French Republic orders and directs all officers on demand to put this judgment into execution.

To the Procureurs General and to the Procureurs of the Republic at the Tribunals of first instance to carry out this judgment.

To all commandants and officers of the public force to lend forcible help, when legallly required.

(Here follow certifications.)

Exhibit Judgment, April 23, 1904.

23rd April, 1904.

1980

(Seal of the French Republic) Extract from the minutes of the Court Records of the Civil Tribunal of first instance of the arrondisement of Grenoble, (Isere), French Republic.

IN THE NAME OF THE FRENCH PEOPLE:

The first chamber of the Civil Tribunal of first instance of the Arrondisement of Grenoble (Isere) has rendered at its public session held April 23,

1904, the Judgment, the tenor of which follows the statement of the case as follows: 1981

STATEMENT.

Between: Mons. Henri Lecouturier, judicially appointed administrator, of the Civil Tribunal of the Seine, residing at Paris, 28 Rue de Mont Thabor, acting in his capacity of liquidating administrator and receiver of the property of the dissolved Congregation of the Chatreux, appointed to these duties by judgment of the Civil Tribunal of Grenoble, rendered March 31, 1903, plaintiff by writ of May 30, 1903, on the one part:

And, Mons. Celestin Marius Rey, priest, ex-Procureur of the dissolved Congregation of the Chartreux, domiciled at Fourvoirie, Commune of St. Laurent du Pont, defendant, on the other part. 1982

And between Mons. Gervais Garnier, pharmacist, residing in Paris, Boulevard Reverie, 169, claiming to act as Assignee, under a deed under private seal, dated at Paris of July 1, 1901, of the rights of Louis Constant Garnier, proprietor, at St. Paulein (Haute-Loire) in the succession of Jean Francois, called Louis Garnier, in his lifetime residing at La Grande Chartreuse, intervening on petition to the Tribunal, signified through solicitors by order of the Palace of Oct. 19, 1903, on the other part. 1983

And Messrs. Bonal and Son, distillers, domiciled at Saint Laurent du Pont and if necessary, Mons. Hippolyte Bonal pere, personally and as member of the firm of Bonal & Son, intervening on petition to the Tribunal, signified through solicitors Nov. 25, 1903, also on the other part.

M. Guignier, counsel of Mons. Lecouturier in his representative capacities pleading through M. Millerand, advocate of the Bar of Paris, contended that the Tribunal should adjudge the Congregation of the Chartreux sole, real and true owner of the

1984 business of the manufacture of liqueurs, elixirs, etc., products which it caused to be manufactured both at La Grande Chartreuse and Fourvoirie under the commercial designation of liqueur fabriquée à la Grande Chartreuse, Elixir Vegetal de la Grande Chartreuse, products of La Grande Chartreuse, the said property including particularly the clientage and good will attached to the business, the ownership of the trade-marks and the commercial means employed to designate the products, as well as the shape of the bottles, flasks, boxes and cases employed to contain and inclose these products, the exclusive right to the commer-
1985 cial and industrial use of the name of L. Garnier belonging to the business, the furniture and tools of every kind used for the manufacture of the goods, the merchandise, raw materials, manufactured products and accessory merchandise of all kinds found in the warehouses and cellars of la Grande Chartreuse and at Fourvoirie, as also in all warehouses and any other buildings or dependencies generally of the said business. Particularly to adjudge that the plaintiff has alone the right to avail himself of all registration of names, trademarks, labels, effected by Rey or his predecessors,
1986 L. Garnier and Grazier, either in France or in foreign countries. To adjudge that Rey, having solely and simply under the example of L. Garnier and Grezier, served as a substitute (loaned name) for the Congregation and managed its affairs, the deed of sale of Nov. 20, 1897, as also that of Dec. 9, 1871, amended Aug. 31, 1878, are tainted with fraud in that the Congregation is not there stated to be sole and true owner of the business, consequently to enjoin the Abbe Rey from using henceforth the trademarks, commercial names, labels serving to designate the products, shapes of bottles, flasks, bottles, boxes employed to contain them, as

also the name of L. Garnier: to order Rey to relin- 1987
quish to the plaintiff the business in question with all its dependencies. To order him to furnish a statement of the products by him withdrawn from the manufacture of this business from July 1, 1901, and to pay to the plaintiff, by way of reimbursement, the value of those products. To adjudge that the deeds of Dec. 9, 1871, and Nov. 20, 1897, are void as accomplished by persons interposed for the benefit of the Congregation: that those who have so figured, notably Messrs. Rey and Grezier, are presumed to be persons interposed for the benefit of the Congregation des Chartreux. Collaterally to 1988
adjudge in fact that the liquidation by sound, exact and concordant presumptions has proved this interposition. To decree in consequence that the business, with all its accessories is a property held by the Congregation within the terms of article 19, Paragraph 3 of the law of July 1, 1901. To decree and adjudge that the trademarks in litigation, as well as the business on which they depend, belong to the State and form a part of the manufacture of the liqueurs. So far as concerns Gervais Garnier, to declare his intervention not admissible, in every way ill-founded, to dismiss it and to order him to pay costs. 1989

So far as concerns Bonal and Son and Hippolyte to declare not admissible and in every way ill-founded in their intervention and to order them to pay costs.

M. Esprit, solicitor for Abbe Rey, pleading through M. Morin, advocate, contended that the Tribunal, without considering any other means or ends, should decree Lecouturier without power to appear in the suit, and in the end to dismiss all his demands, aims and conclusions and to order him to pay costs.

M. Morel, solicitor for Gervais Garnier, contend-

1990 ed that the Tribunal should allow him to intervene in the proceeding pending between M. Lecouturier in his representative capacity and the Abbe Rey and this intervention being admitted as to form and justified in fact, to decree and adjudge that the Congregation des Chartreux sole real and true owner of the business of manufacturing liqueurs and other products, which it caused to be made at La Grande Chartreuse under the commercial designation of Liqueur de la Grande Chartreuse, to order the Abbe Rey to pay all costs.

M. Charle, solicitor for Bonal & Son and Hippolyte Bonal, pleading through M. Porte, advocate,
1991 contended that the Tribunal, deciding on the intervention, should receive Bonal & Son and if necessary Bonal pere as a member of the firm of Bonal & Son, and if necessary as an individual intervening in the suit begun May 30, 1903, by request of M. Lecouturier, receiver of the Chartreux against the Abbe Rey who pretended to be the owner of the liqueur of La Chartreuse, which being done ,to decree and adjudge (1) that the Abbe Rey by himself or through others had never been more than the apparent owner of the liqueurs, elixirs and other products manufactured both at La Grande Char-
1992 treuse and at Fourvoirie under the commercial name of "Liqueur fabriquée à la Grande Chartreuse," "Elixir vegetal de la Grande Chartreuse," "Produits de la Grande Chartreuse," and especially the trademarks and commercial names serving to distinguish the products, as well as the shape of the bottles, flasks, boxes and cases used to contain and inclose these products: to decree that in fact he was only an interposed person, a loaned name for the unauthorized Congregation of the Chartreux, and that the titles invoked by him and the registrations of marks have had only the purpose of evading the laws on unauthorized religious con-

gregations prior to the law of 1901: to decree that 1993
these titles and registrations of marks are and always have been void, of a nullity of public order: that moreover they are non-existing and that any third party and in any case Bonal et fils and Bonal pére can invoke this nullity and this non-existence: (2) to decree, this first point granted, that the Receiver of the Chartreux cannot draw into the liquidation any right either of the registration of trademark by the apparent proprietors or of their ownership. Consequently to decree that the words "Grande Chartreuse" and "Chartreuse," the mark of the liqueurs, elixirs and products of la Chartreuse, the shapes of the bottles, flasks, boxes and 1994
cases, in a word, the industrial property in all its forms exploited by Abbe Rey as the substitute (loaned name) for the Chartreux, cannot be claimed by the Receiver: that in any case it cannot be recognized for the benefit of the Receiver, that this industrial property has never existed for want of a legal person to own it; (3) to enjoin the Abbe Rey and the Receiver from troubling either Bonal & Son or Bonal pére, in their business, in the name of this pretended industrial property. Resting upon the arguments in reply and the additional arguments of the intervenors. Finally, to decree and 1995
adjudge that the property of the Congregation not recognized and especially the property of the Chartreux, more particularly the trademark of the liqueur, does not belong to the State by virtue of the law of 1901 or previous laws: to decree on the contrary that Bonal is regular owner of the mark "Supreme de la Grande Chartreuse," deposited by him Apr. 25, 1903: and that the receiver cannot destroy it by reason of a pretended right of the State to the mark of liqueur de la Chartreuse. To dismiss the full demands, contentions and arguments of all par-

1996 ties. To order the Abbe Rey or the Receiver, or which ever ought to bear it, to pay costs. Under all reservations and especially as to the right to damages for injury suffered in the past and as to the right of contesting later the use of the old mark of la Chartreuse for all other reasons in case it shall be maintained contrary to the contentions of the intervenors.

By petition to the President of the Tribunal, M. Lecouturier, in his representative capacity, has made a statement of the following facts: On Sept. 22, 1901, and through the mouthpiece of Pére
1997 Michel (born Alfred Louis Baglin) acting as prior of la Grande Chartreuse, the unrecognized and unauthorized Congregation of the Chartreux addressed to the Minister of Religions an application for the authorization provided for by article 13 of the law of July 1, 1901: at its session of Dec. 2, 1902, the Chamber of Deputies had brought before it by the President of the Council, a project for a law relating to this application for authorization, and at its session of March 26, 1903, it rejected the said application: that consequently and under the terms of article 18, paragraph 2 of the law of July 1, 1901, the Congregation of the Chartreux found
1998 itself completely dissolved: by virtue of this article, paragraph 3 of this law, the Civil Tribunal of Grenoble, by judgment of March 31, 1903, named M. Lecouturier Liquidator of the property of the said Congregation; in that capacity he had to search for all the property of whatever nature held by the Congregation or for its account in order to include it in the liquidation and to distribute the proceeds among those having the rights, which the law enumerates: among these properties figures especially the business of manufacturing liqueurs, elixirs and other products, which under the care of M. Rey, in religion Dom Valery, Procureur of the Congrega-

tion of the Chartreux, pretending that he himself was secularised, this Congregation caused to be made both at La Grande Chartreuse and at Fourvoirie, commune of Saint Laurent du Pont, under the commercial designations of "Liqueur fabriquée à la Grande Chartreuse," "Elixir Vegetal de la Grande Chartreuse," "Produits de la Grande Chartreuse," the said business including especially the clientage and good will belonging to it, the ownership of the trademarks and commercial names serving to distinguish the products, together with the shapes of the bottles, flasks, boxes and cases serving to contain and inclose these products, the exclusive right to the industrial and commercial name of L. Garnier, the industrial property in all forms attaching to the business, the furniture and utensils of every kind serving for the carrying on of the business or commerce—the merchandise, raw materials, manufactured products and accessory merchandise of all kinds found in the warehouses and the cellars of La Grande Chartreuse and at Fourvoirie, as also in all stores and all other appurtenances and dependencies generally whatsoever of the said business. In fact, M. Rey pretended to be the owner of this business and to support this pretention he invoked a contract of November 20, 1897, acknowledged before M. Sourd, Notary at Saint Pierre de Chartereuse, by the terms of which he purported to have acquired the property in question from M. Gabriel Alfred Grezier, in religion Marcel-Marie, then Procureur of the Chartreux, who held it himself from M. L. Garnier, also Procureur of the Chartreux, who undertook to grant it to him by deed under the minutes of M. Sourd pére, Notary at Saint Pierre de Chartreuse, under date of December 9, 1871 (deed corrected Aug. 31, 1878), but this pretention should not be admitted, Mons. 1999 2000 2001

2002 Rey, like his predecessors, having solely and simply lent his name, as will be justified, to the Congregation of the Chartreux, sole real and true owner of the business, in order to permit that Congregation to elude its legal incapacity to acquire.

Following this explanation, M. Lecouturier asked for and obtained by an order of the President, dated May 23, 1903, authorization in virtue of which and by writ of 30th of the same month of May, he has, constituting M. Guignier, his solicitor, cited M. Rey after the brief delay of three days to appear before the Tribunal after the arguments above reproduced. On this appearance, Mr. Lantelme, solic-
2003 itor, appeared for the Abbe Rey; after the death of Mr. Lantelme, and under date of Nov. 26, 1903, Mr. Esprit, solicitor, took the place of Mr. Lantelme for the Abbe Rey.

On Oct. 3, 1903, the Abbe Rey caused to be signified his contentions, by which, while protesting formally against the pretensions of the Receiver, he asked for delay in pleading to the demand of the Receiver until after the decision of the action brought by the Garnier heirs and which was on appeal before the court of Grenoble.

M. Lecouturier in his representative capacity sig-
2004 nified in reply to the arguments asking that it be passed on during the delay asked for. Other requests in the matter were also presented in the name of the Liquidator.

On Oct. 19, 1903, M. Gervais Garnier, by his solicitor, M. Morel, caused to signify on petition to the Tribunal, an intervention in the suit by M. Lecouturier, in which intervention Gervais Garnier contended in the terms above reproduced in his name. It is contended in this intervention by Gervais Garnier that by the terms of a deed under seal, dated at Paris, July 1, 1901, he is assignee of the rights of Louis Eustache Garnier, his father,

proprietor at Saint Paulien (Haute-Loire), in the succession of Jean Francois called Louis Garnier, deceased at la Grande Chartreuse Jan. 10, 1876, leaving as heirs, to wit (1) his sister Marguerite Garnier, nun of the order of the Visitation; (2) his brother, Jean Pierre Garnier, Monk at la Grande Chartreuse; (3) the six children of Jean Claude Garnier, his brother, died the 18th of January, 1871; that Marguerite Garnier herself died Jan. 20, 1893, without leaving ancestors or descendants; that Jean Pierre Garnier died Oct. 21, 1891, without ancestors or descendants; that also and by way of increase, the succession of Jean Francois called Louis Garnier, has devolved wholly upon the children of Jean Claude Garnier, for each a sixth: that Louis Eustache Garnier pére, assignor of Gervais Garnier is one of these six children, that consequently Gervais Garnier has the right to exercise the rights and actions of his ancestors. The intervener then recalls that Jean Francois, called Louis Garnier, by different registrations in the records of the Tribunal of Commerce of Grenoble, was assured the private and exclusive property of different liqueurs and other products of the Congregation and other products of the Congregation known for a long time under the name of "Liqueur et Elixir de la Grande Chartreuse," or under that of "la Chartreuse," together with the ownership of names, trademarks and designs and models under which the different products have been distributed in commerce. The intervener also recalls the deed passed Dec. 9, 1871, before M. Sourd, Notary at St. Pierre de Chartreuse, by which Garnier transmitted to Grezier, then Procureur of la Grande Chartreuse, all the rights resulting from the registrations above indicated with authority to use his name, Grezier declaring in the said deed that he accepted the cession transmission and authority to which it re-

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2008 lates. The intervener affirms that this deed is void and of no effect, pére Grezier not being capable of taking it, as is also void the deed passed before M. Sourd, Notary, Nov. 20, 1897, by which Grezier himself transmitted his rights to Rey, in religion, Dom Valery, who in his turn undertook to transmit the said rights to Dom Clovis last Procureur of la Grande Chartreuse: the intervener contends that there should be judgment both against Grezier and his assignees to whom he could not transmit rights which he did not have himself: He explains on the other hand that father Grezier was merely a person interposed between Father Garnier and the Congre-
2009 gation of the Chartreux, which was neither recognized or authorized and was incapable of acquiring. The deed of Dec. 9, 1871, is therefore void by application of article 911 of the Civil code, and in any case, Garnier has the right to invoke the law of July 1, 1901, the property and values acquired from father Garnier by the Congregation not having been affected especially as a work of assistance. The intervener then recalls that in December, 1901, he commenced before the Tribunal of Grenoble against Messrs. Grezier and Rey an action of nullity of the deed of Dec. 9, 1871, and of the transfer of Nov.
2010 23, 1897, and for a decree that all the rights mentioned in the deed of Dec. 9, 1871, have never ceased to form a part of the patrimony of Mons. Garnier, that consequently, Grezier, Rey and Dom Clovis or all other assignees are without right to exploit the products, trademarks, designs and labels, which revert to the succession of father Garnier, that on this application, an incidental judgment had been rendered and the matter was before the Court; that under these conditions Gervais Garnier having knowledge of the action brought by the Receiver, of the Congregation against Mons. Rey, he thought it useful to intervene in this action

in order that nothing might be adjudicated contrary to his rights and claims. 2011

Under Nov. 25, 1903, Messrs. Bonal and Son, distillers at Saint Laurent du Pont, and Mons. Hippolyte Bonal pére, both as member of the said firm and as an individual, appearing by solicitor M. Charle, notified their intervention, at the end of the argument above noted in their name, explaining that the argument of the Liquidator being admitted and being recognized that the Abbe Rey and his representatives had been only persons interposed, the registries of the mark of the Chartruese and its use had been for a long time only a fraud under the laws of public order as to religious 2012
Congregations, and are absolutely void and non-existent. The interveners argue that any interested third party has the right to invoke this nullity and non-existence and that they have, moreover, themselves a special situation; that in fact in 1900 Bonal, Sr., was sued for infringement by Grezier, predecessor of Abbe Rey, before the Tribunal of Grenoble; that the case had been argued, that Bonal raised precisely the contention that the Abbe Rey was only the apparent proprietor and a person interposed for account of the Chartreux; that after the pleadings, propositions for settlement intervened and the 2013
decision of the Tribunal was suspended, but that the negotiations did not lead to anything and that the case was still pending. The interveners argued that on the other hand, and at the date of May 30th, 1903, M. Lecouturier warned Bonal against using the label deposited by them Apr. 25, preceding and bearing the words "Grande Chartreuse." The interveners explained further that the Chartreux had not acquired any right since they did not exist legally; that on principle, commerce and industry are free in France; that Bonal, father and son, as manufacturers of liqueur can only have op-

2014 posed to them a mark or industrial possession of legal character; that the first condition is that the mark or possession shall be a subject capable of lawful right, a quality which the Chartreux cannot have; that it can not be contended that the loaned name of the Chartreux or the Chartreux have kept the rights of the liquidation, that in fact they have kept nothing since they have acquired nothing, and that in fact the liquidation is only the Congregation itself. The intervenors add further this argument that industrial property is an incorporeal right consisting particularly in the limitation of the rights of third parties, and that to be recognized by the
2015 Tribunals this industrial property and its restrictions upon the rights of others ought to be based upon a legal approval, in default of which any third party in pertuity has the right to invoke the freedom of commerce and liberty.

M. Lecouturier in reply to the arguments of the Abbe Rey and in reply to this intervention has offered arguments Dec. 7, 1903, arguments to which Bonal has made no reply signified on the 9th of the same month.

On the principal action and on the two interventions above analyzed, the cause has been
2016 brought to a hearing and argued on the 11th and 12th of Dec., 1903, the Procureur of the Republic has made his argument at the hearing of Jan. 16, 1904, to which date the cause had been adjourned.

So far as concerns the intervention of Bonal: The Procureur argued that the application of Messrs. Bonal was admissible but not well founded; that their demands should be refused and that they should be condemned to pay the costs; that the intervention of Gervais Garnier should be rejected as not admissible and not well founded; so far as concerns the action on the claim of M. Lecouturier that his demands should be granted and in consequence

that the commercial property and all the rights which belong to them, including the trademarks, should be included in the liquidation of the property of the Congregation of the Chartreux. 2017

On the immediate application of these presumptions of interposition of persons evicted under article 17 of the law of the 1st of July, 1901, the Abbe Rey should be declared presumed to be a person interposed for the Congregation of the Chartreux and that he having failed to offer proof to the contrary, the act of sale of Nov. 20, 1897, is void.

On Feb. 4th following, the Tribunal made an order directing the re-opening of the arguments to permit counsel for Abbe Rey to explain the papers and especially a letter from father Dom Michel, produced at the hearing by the Procureur of the Republic. 2018

At the hearing of Feb. 24, Mr. Morin, solicitor for Abbe Rey, made arguments through his counsel asking that it please the Court to decree that there cannot be produced at the arguments any of the confidential letters seized at Beauregard, this production being prohibited by the respect due to the secrecy of letters and of which use cannot be made by a third party without the consent of the sender and receiver; to condemn Lecouturier to the costs of this incident. 2019

M. Quignier, counsel for Lecouturier, asked that it please the Court in passing on the arguments previously made by him, to order and decree that the letters produced at the argument by the Procureur of the Republic had been properly produced, to order and decree that they had lost their confidential character by reason of their production and of the reading of them which had been made at the public hearing in the previous criminal action, and also by reason of the printing of the said letters in the newspapers; to decree moreover

2020 that proof of the facts in support of which the letters were produced at the arguments is superfluous in view of the legal presumptions of article 17 of the law of the 1st of July, 1901, and to condemn Rey to pay the costs.

Notes have been exchanged on one side and the other and the case has been adjourned to the 23rd of April, following for the announcement of the judgment.

In law: Is the principal demand of Lecouturier as Liquidator well founded?

What should be done as to the production at the hearing by the Procureur of the Republic of a
2021 letter of Dom Michel seized by representative of the law at the convent of the Chartreuseines of Beauregard?

Is the intervention of Gervais Garnier admissible? Is it well founded?

What of the intervention of Bonal, father and son?

(Signed) Guignier,
Counsel.

On the margin is written: The year 1904 and the 21st of May, at the request of M. Guignier, counsel,
2022 has been signified copy of these papers to Messrs. Esprit, Charle and Morel, also counsel.

At the Palace, speaking for M. Esprit to him who has made opposition, for Mr. Charle, to him who has made opposition, for Mr. Morel, to him has made opposition.

Costs 70 centimes. (Signed) Caillet,
Officer.

We give default judgment against Messrs. Esprit, Charle, and Morel, counsel, who have not appeared although regularly cited, for this place, day and hour, and we maintain the present qualities

such as they have been signified. We decree, more- 2023
over, that following an act of the Palace of Dec. 8, 1903, there has been signified in the name of M. Lecouturier to Mr. Esprit, counsel for Abbe Rey, arguments asking that it please the Court to pass on the arguments previously made by him and to adjudge and decree that immediate measures be taken for the preservation and administration of the property in litigation, to adjudge and decree that he, Lecouturier, shall be, with all powers thereto belonging, sequestrating administrator of the said property and all accessories connected with it, to order a provisional execution notwithstanding appeal and without security conformable to article 2024
135 of the code of procedure, but these arguments have not been made at the hearings nor deposited at the offices of the Court.

Grenoble, at the Palace, 25th of May, 1904, 9 A. M.

(Signed) Rabatel,
President.

JUDGMENT.

WHEREAS in virtue of a petition granted by the President of the Court on the 23rd day of May, 1903, Henri Lecouturier, acting in his capacity of Official Receiver and Judicial Liquidator of the 2025
assets of the Order of Carthusian Monks, has, by a document dated the thirtieth of the same month, summoned the Abbe Rey to appear before the Court, in order to hear adjudged and declared:

That the Order of Carthusian Monks is the real, veritable and sole proprietor of the business of the manufacture of liqueurs, cordials and other products carried on both at the Grande Chartreuse and at Fourvoirie, together with all the accessories and appurtenances whatsoever enumerated in the said summons; that the deed of the 20th of November, 1897, by which the aforesaid Rey acquired the said

2026 business, be declared null and void by reason of his being merely a passive trustee appointed by the Order of Carthusian Monks; that consequently the business with all the accessories and rights appertaining thereto be abandoned by Rey, pretended owner thereof, and be taken possession of by the plaintiff, in order to become part of the liquidation, as an asset held back by the Order of Carthusian Monks, and this in accordance with the terms of Art. 18 of the law of July 1st, 1901;

Whereas, the Abbé Rey having instructed his attorney to put in an appearance for his defence,
2027 Gervais Garnier, acting in his capacity of assignee of his father, Louis Eustache Garnier, in the estate of Jean Francois, known as Louis Garnier, intervened in the suit by a petition dated the 19th day of October, 1903; whereas he merely requested at this stage that the Order of Carthusian Monks be declared sole proprietor of the business, the Abbé Rey acting simply as a passive trustee in the deed of the 20th November, 1897, the object of the said Gervais Garnier being ultimately to request the Court, in the suit brought by him against Lecouturier in his official capacity, to decide that the
2028 deed of the 9th December, 1871, by which Louis Garnier assigned his rights to Grézier, be declared null and void; that consequently the said Grézier, as also his assignee Rey, had acquired no rights whatsoever on account of the nullity of the aforesaid deed; that therefore he, Gervais, was entitled to claim the rights which were due him in the estate of his granduncle, which rights had never vested in Rey nor become incorporated in the assets of the dissolved Order of Carthusian Monks, of which the Liquidator of the Chartreux claims that they form part or that they should be made

to form part by a judgment to be rendered in the suit pending before the Court; 2029

Whereas, by an official document, dated the 25th day of November, 1903, Bonal & fils, distillers at Saint-Laurent-du-Pont, and in so far as necessary Hippolyte Bonal senior, both as member of the aforesaid company and in his personal capacity, have on their part intervened in the present suit, requesting the Court to adjudge that the words "Grande Chartreuse" and "Chartreuse," trademarks of the liqueurs, cordials and other products of the Chartreuse, the models of bottles, flagons, boxes and cases, in a word, the industrial property in all its forms, exploited by the Abbé Rey, ostensibly for the Order of Carthusian Monks, cannot be claimed by the liquidator; that this industrial property has never existed, owing to the fact that there has never been a legally recognized person to own it; consequently, that the Abbé Rey and the liquidator be forbidden to trouble in the name of this alleged industrial property, either Bonal & fils or Bonal senior in their business, with reserve of all other rights mentioned in the intervention; 2030

Whereas, the claims of the parties being thus set forth, it behooves the Court to examine the various arguments invoked by the said parties in support thereof, and to give to each of the questions raised the neecssary solution. 2031

On the intervention of Gervais Garnier:

Whereas, prior to the present suit, Gervais Garnier, by an official document dated the 6th and 7th September, 1901, and 7th January, 1902, summoned Father Grézier, Father Rey and Father Boudevin to appear before the Court, for reasons which it is needless to recapitulate, in order to show cause why the deed of assignment of the 9th December, 1871, be not declared void, as also all

2032 other assignments executed thereafter; in consequence thereof, to hear the Court declare that all the rights mentioned therein had never ceased to form part of the patrimony and estate of Jean Francois, known as Louis Garnier; that therefore the defendants had no right to exploit the products, trademarks and labels which Father Garnier had acquired in conformity with the law and which descended to his heirs, &c. * * * ; consequently, to hear the Court declare that the defendants should restore to the plaintiff the stock, recipes, formulæ, certificates of registration and
2033 all other documents which, being the property of Father Garnier, were unlawfully held by Grézier or his assignees; finally to hear the Court declare that the defendants should restore the profits realized by the Carthusian Monks since the deed of 1871, said profits to be established by an account;

Whereas, by a judgment of the 21st February, 1903, this Court, after having heard both parties in the aforesaid suit, dismissed the complaint of Gervais Garnier incompetent, for the reason that Louis Garnier, who died at the Convent of the Grande-Chartreuse on the 10th January, 1876, had by a holographic will, dated the 21st March, 1867,
2034 appointed a residuary legatee, who duly entered into possession of his estate by virtue of an order of the President of the Court, dated February 9th, 1876; consequently, the next-of-kin, who were excluded from the estate of their next-of-kin by the appointment of a residuary legatee, had no interest in collecting property which benefitted no one but the residuary legatee, who alone had the right to demand the cancellation of the deeds in question, whatever might be the nature of the cancellation demanded;

Whereas, an appeal was entered against this

judgment, and Gervais Garnier subsequently discontinued the appeal; and whereas it has been adjudged and declared without the faculty of appeal therefrom, that he is not in the circumstances competent to raise any question regarding the deeds of 1871 and 1897; whereas this judicial situation renders the present intervention by him inadmissible, and therefore his petition should be dismissed. 2035

On the intervention of Bonal & fils, and, in so far as necessary, of Bonal senior;

Whereas, on the 25th day of April, 1903, the latter registered at the Tribunal of Commerce of Grenoble a label and trademark containing the words "The Supreme of the Grande-Chartreuse, manufactured by Raphael, late Brother of the Convent"; whereas Lecouturier, in his official capacity, caused to be served upon him on the 30th May, 1903, a judicial document, by which he was reminded that the right to use the word "Chartreuse" was the property of Father Garnier, Father Grézier and Father Rey, and belonged to the liquidation; that, however, a suit had just been commenced in order to decide this question, and that in any case the said Bonal was prohibited from using the aforesaid trademark, reserving the right should he fail to comply with this prohibition, to summons him anew; whereas the admissibility of the intervention as regards form is justified by the evident interest of Bonal in having the claim of Lecouturier to the ancient trademark removed, the said trademark being considered by Bonal as non-existent, and the consequence of the admission of Bonal's claim being to give the trademark which he registered recently all its value, failing priority; 2036 2037

Whereas, Bonal claims that as the trademark forms only one of the elements of the business of liqueurs of the Grande-Chartreuse, it may be easily

2038 separated therefrom; that legally it could never have been the property of the Fathers Garnier, Grézier and Rey, who were merely passive trustees appointed by the Order of Carthusian Monks (this question which the argument of Bonal supposes to be decided in the above sense, will be adjudged upon hereinafter), nor could it have been the property of the Order of Carthusian Monks, since this Order was not authorized and therefore had no legal existence or civil capacity; that it follows that all the documents concerning this trademark were null and void, and that this nullity is radical and of public order; that therefore the mark itself
2039 being without any judicial value is non-existent and could never be the object of the detention indicated in Article 18 of the Law of the 1st July, 1901; that it could not in consequence be seized by the liquidator, whose complaint should be dismissed;

Whereas, if theoretically the trademark may, as a matter of fact, be separated from the business itself, of which it is an accessory, the suit for recovery brought by the liquidator includes the business in question in its entirety; whereas it is on these conditions that the Abbé Rey is defending the
2040 said suit, and there has moreover never been a question of considering the trademark apart; whereas, as a matter of fact, the assignment of the 20th March, 1897, which the defendant invokes, includes the ensemble of the business, the goods, stock of materials, and the rights appertaining to the industrial property, that is to say, the clientelage, good will, trademark, etc. * * * ; whereas in fact there is in law no indivisibility between the elements forming the *universitas juris* which constitute a business, but whereas in the action now pending before the Court there is in fact an indivisibility, against which the theory of Bonal

cannot prevail, which claims in the first place that 2041
the mark shall be separated from the business, and in the second place that the trademark does not exist;

Whereas, moreover, this inexistence is incompatible both with the nature of the trademark and with the true state of things; whereas the trademark, which is the distinguishing sign of a product, is created and acquired by the usage thereof, independently of its registration, which is merely a declaration and not an assumption of ownership; whereas it is solely by the use of a trademark that it is preserved, and whereas it is not lost except by 2042
the express abandonment thereof, or by not being used for a sufficiently prolonged period; whereas the trademark of the Grande-Chartreuse has never been abandoned, and after having been registered successively in 1852, 1862, 1864, 1869, 1871 and 1877, it has strengthened its vitality by incessant struggles with numerous infringers, amongst whom the present petitioner, and has been protected by half a century of judgments and decrees;

Whereas, the trademark, after having figured as the principal element in the assignments of 1871 and 1897, is actually at the present time defended by the Abbé Rey, who disputes 2043
the ownership thereof with the liquidator; whereas, in view of the present situation, it would be paradoxical to declare that the trademark does not exist; whereas judicial theories may sometimes clash in a manner contrary to equity without the Court having the power to change this state of things, but such theories cannot be admitted, no matter how ingenious and persuasive the arguments in support of them, when they necessarily result in the denial of a fact which is as clear as the light of day;

2044 Whereas the actual possession by the defendant and his predecessors of the trademark in litigation being certain, the Court, in declaring the Abbé Rey to be a passive trustee appointed by the religious Order actually dissolved, will place the trademark *ipso facto* in the liquidation to be effected by virtue of Art. 18 of the law of July 1st, 1901, in the same manner as the real estate shall become a part of the said liquidation, although such real estate is claimed by the alleged owners thereof, who will be declared to be merely passive trustees appointed by the Order of Carthusian Monks; and
2045 the incapacity of the owner of the trademark shall not prevent this result nor withhold it from the totality of assets to be liquidated; whereas it cannot result from the irregularity of the possession of the trademark by a private person interposed on behalf of a religious association which is non-existent in the eyes of the law, that the trademark should be considered as though it had never been the property of anyone, or rather as if it had never existed, and that consequently it should fall into the public domain; whereas the trademark, effectively held as any other corporal or incorporal asset of the Order of Carthusian Monks, which was tol-
2046 erated in fact, falls under Art. 18 of the aforementioned law, the object of which was to dissolve the patrimony of every kind belonging to non-authorized religious associations, and which, for the needs of the liquidation, gave to such patrimony a fictitious existence; whereas the contrary theory, by virtue of which the industrial property has never existed failing a legally recognized person as owner thereof, would tend to frustrate the law as regards a certain category of assets, contrary to the evident intention of the legislator, who could not have desired to forge a useless weapon;

Whereas, Bonal claims erroneously that Lecouturier cannot act except as representative of the Order of Carthusian Monks, or of the State, for the purpose of making to each of these hypotheses objections which may be more or less technical; whereas Lecouturier is acting in fact as Official Receiver and Judicial Liquidator in virtue of the necessary powers which have been conferred upon him legally and judicially, and represents no one person in particular, but all the claimants indicated in Art. 18, without distinction, in order to ensure ultimately, when his mission is fulfilled, the division of the assets and the deposit of the balance at the Caisse des Dépôts et Consignations; whereas the business and the trademark are actually claimed, not by the State, but by the Liquidator in his official capacity and in his personal name, and not as unclaimed assets without an owner, but as assets held by the Order of Carthusian Monks, excepting, however, that ultimately should these assets or the value thereof, or the balance that remains, not be attributable to any person, they will definitely devolve upon the State, which will then benefit by the rights belonging to it in virtue of the general principles of our law. 2047 2048

Whereas the foregoing findings sufficiently reply to the pleadings of Bonal, whether principal or subsidiary; whereas, further, his action tends to nothing less than a fresh effort towards the usurpation of the mark in question, by taking advantage of the uncertainty regarding the ownership thereof, this usurpation being perpared by his registering a trademark on the 25th April, 1903; whereas from these various points of view his complaint should be dismissed as groundless. 2049

On the action for recovery of property brought by Lecouturier in his official capacity against the Abbé Rey:

2050 Whereas, by the document hereinbefore mentioned, dated the 20th November, 1897, filed with Maître Sbuard, notary at Saint-Pierre-de-Chartreuse, Gabriel Alfred Grézier, "procureur" of the convent, assigned to Marius Célestin Rey, the business of the manufacture of liqueurs, sweet wines and other products exploited at the Grande-Chartreuse and at Fourvoirie, in the Commune of Saint-Laurent-du-Pont, under the commercial name of "Liqueur manufactured at the Grande Chartreuse, Vegetable Elixir of the Grande Chartreuse, or Products of the Grande-Chartreuse," the said busi-
2051 ness consisting of, 1° the clientelage and goodwill attached thereto; 2° the ownership of the trademarks and commercial names used to distinguish the said products, as also the models of bottles, flagons, boxes and cases employed to contain them; 3° the exclusive right to the industrial and commercial use of the name L. Garnier; 4° the rights resulting from all assignments, transfers and authorization executed by the said L. Garnier in favour of Grézier, in accordance with a document filed with the same notary on 9th December, 1871, modified by a further document filed on the 31st August, 1878; 5° the right to call himself the sole
2052 successor of Grézier, and consequently of Louis Garnier; 6° the industrial property in all its forms in the same manner as the vendor possesses it and has hitherto publicly enjoyed it, without disturbance, together with the benefit of the judgments and decrees which have sanctioned it; 7° the furniture and installation serving to exploit the said business; 8° finally, the goods, raw material, manufactured products and accessories of all kinds actually in the storehouses and cellars of the Grande-Chartreuse and of Fourvoirie; whereas this sale was made in consideration of a total sum of frs. 4,449,026.45, paid in cash before a notary,

such sum being apportioned between the various elements hereinabove mentioned, and applying particularly in the amount of frs. 4,449,026, to the trademarks and accessories thereof; whereas the aforesaid price was the object of a claim by the Enregistrement (official Bureau, the duty of which is to collect taxes and dues) by reason of its insufficiency, and the price was therefore, after examination by an expert and in virtue of a compromise dated 28th April, 1899, increased to the sum of 7,000,000 francs; 2053

Whereas, although this acquisition of title is regular in so far as the form is concerned, Lecouturier claims that the defendant, who is not mentioned in the aforesaid contract in his capacity of member of the Order of Carthusian Monks, but who certainly did form part of the Order at the time of the execution thereof, his secularisation, whether pretended or real, having taken place thereafter, cannot be considered as the real and veritable owner of the business including the trademark which was the object of the contract, whereas he invokes in support of his claim, in the first place, Art. 17 of the law of the 1st July, 1901, by the terms of which members of religious associations to whom sales have been made are presumed legally to be passive trustees, the burden of proof to the contrary falling upon such persons; and in the second place, Art. 911 of the Civil Code, which provides that all dispositions made in behalf of an incapable are null and void, whether such disposition be disguised under the form of a contract with certain conditions attached thereto, or whether they be made in the name of a passive trustee; 2054 2055

Whereas, without judging upon the first point, which involves the solution of a question which is much contested both in doctrine and in jurispru-

2056 dence, and which is not yet definitely decided, that is to say, whether Art. 17, in so far as it concerns contracts, has or has not a retrotractive effect, it suffices to recall the fact that contracts executed by members of non-authorised religious Orders have always been liable to be attacked in virtue of the general principles of the law prior to the law of 1921, and that decisions have constantly cancelled such contracts whenever it has been proved that members of such Orders have not acted in their own behalf but have served as passive trustees appointed by their communities, which, having no
2057 civil personality, could not legally either own or acquire property; whereas, further, the appointment of passive trustees may, like any other act to frustrate the law, be established by any means whatsoever;

Whereas Lecouturier, in his official capacity, basing his claim upon these decisions, maintains that the contract invoked by the Abbé Rey cannot be declared valid on account of the position of the Abbé Rey as passive trustee appointed by the Order of Carthusian Monks, and that this position is proved by an ensemble of serious and categorical presumptions which agree with one another and
2058 are drawn, firstly, from the general statutes of the Order of Carthusian Monks; secondly, from the documents concerning the manufacture of liqueurs; thirdly, from the personality of the assignee; and lastly, from the circumstances which preceded, accompanied or followed the assignment in question;

Whereas in accordance with the terms of Articles 15 and 16 of the Statutes, the "Procureur" is charged with the administration of the temporal affairs of each institution governed by a prior, and the Prior of the Grande-Chartreuse is by right the

Superior-General of the other institutions both in France and abroad; whereas in this capacity he has most extensive powers over the religious and secular members of the Order, and as regards the general management of all business; 2059

Whereas, in view of the above facts, the liquidator invokes, first, a letter duly seized by the Magistrate at the institution of the Chartreusines of Beauregard, in the course of a preliminary inquiry which he was appointed to make at Coublevie, which letter bears the date of June 28th, 1900, and is addressed by Dom Michel, Prior of the Grande-Chartreuse and Superior of the Order, to Father Pailhon, chaplain of the Convent; whereas this document, which contains a formal acknowledgement that the manufacture of liqueurs is the property of the Order of Carthusian Monks, was referred to by the Attorney-General in his arguments, after having been communicated to the parties, but whereas this occurred subsequently to the filing of the pleadings, in which consequently no allusion was made to said letter; whereas the hearing of the case has been reopened on account of the above incident it is necessary that the Court should consider the additional pleadings and observations to which the aforesaid incident gave rise at the hearing of the 24th February last; 2060 2061

Whereas, Rey claims that the aforesaid letter should not be produced in Court by reason of its confidential character, which prevents a third party from producing it without the authorization of both the writer and the receiver; whereas the plaintiff, on the contrary, claims that this objection only holds good on condition that the letter remain secret and is not made public for a legitimate reason, and that having been read by the Attorney-General and discussed at a hearing of the Police Court, before

2062 which the receiver of the said letter, Pailhon, was charged, together with other monks of the Carthusian Order, it has by that very fact lost its confidential character and can consequently be taken into consideration;

Whereas, it is generally admitted that the prohibition from divulging the secrets of letters should be overruled in criminal matters as also in matters concerning separation or divorce, but this exception, in spite of a few isolated protestations, has never been extended by decisions of the Courts to simple matters of private interest, even in cases based upon an allegation of fraud or
2063 fraudulent manœuvres, which generally permit all restrictions regarding proof to be put aside; whereas although the Attorney-General has the right to use confidential documents seized in order to establish a misdemeanor or a crime, such documents when once the object is accomplished should be returned to the file from which they have been taken and not be removed therefrom again; whereas it is true that the Court of Cassation, by a decree of the 19th June, 1895, decided in a particular case that a letter had lost its confidential character on account of the publicity of a hearing, but the let-
2064 ter in question, which the plaintiff wished to produce, had been sent to him in his position of accused during the course of the proceedings; whereas at the Court of Assizes this letter had been the object of a discussion in which both parties were heard; and whereas, more particularly, this letter was written by the adversary, against whom the accused wished to produce it in a civil action for damages, brought upon the letter itself; whereas these facts, resulting from the decree against which appeal was entered and from the decree hereinabove mentioned which rejected the appeal, demonstrate the absence of any possible analogy be-

tween the above cited case and the action pending 2065
before the Court, in which the confidential correspondence in question was neither written by nor addressed to either of the parties in interest; whereas, under these circumstances, the principle of Public order that the secret of letters is inviolable should be kept in all its force, and its production before the Court of a document of this nature, foreign to both parties, cannot be made without the authorization of both the writer of the letter and the receiver thereof, who both retain as regards the confidence exchanged a kind of *codominium sui generis;*

Whereas the right to oppose the production of 2066
this letter belongs not only to the writer and to the receiver thereof but also to all third parties against whom it is desired to use the said letter;

Whereas Rey therefore protested rightfully against the production of the letter of the 28th June, 1900, it is decided therefore that the production of the letter shall be refused unconditionally;

Whereas before entering further into the discussion, it is important to recall the following facts: That before the French Revolution, the monks of the Convent of the Grande-Chartreuse possessed a manufacturing secret, which they car- 2067
ried away with them at the time of their expulsion in 1792; that upon their return to France in 1816, and following upon a decision which granted to them the use of the convent and buildings at Fourvoirie, they resumed the exploitation of their product, manufacturing, first, a green liqueur called "Liqueur of Health," then, towards 1833, a white liqueur called "Melisse," and finally about 1840, the yellow liqueur; that these successive liqueurs resulted from the methods of fabrication, developed and perfected by the Brothers and Fathers

2068 of the Grande-Chartreuse and obtained rapidly such success, that Father Garnier, "Procureur," charged in this capacity with the duty of managing the temporal affairs (of the Order) in conformity with Art. 18 of the Statues of the Order, registered a trademark about this time, and was obliged to take measures to defend the business which he conducted against the efforts of numerous infringers; that upon his petition, a suit was commenced by a summons and complaint dated January 14th, 1842, against a certain Sybille, acting for Meunier, manufacturer of liqueurs at Voi-
2069 ron, which said suit was brought to a termination by a compromise dated the 9th July following, the terms of which it is useful to recapitulate because they exclude the idea of personal ownership by Father Gernier, and declare, on the contrary, that the Order of Carthusian Monks alone is interested in the business; as a matter of fact, it is there mentioned: "It is hereby set forth that on the 14th "day of January, 1842, upon the petition of the "Father 'procureur' of the Order of Carthusian "Monks, a summons and complaint was served, etc. "* * * Article 1. Dom Louis Garnier, in his afore-"said capacity * * * declares that he abandons
2070 "the suit * * * Article 3. All suits between "the Order of Carthusian Monks and Messrs Meu-"nier or Sybille are extinguished and terminate "in accordance with the express stipulation set "forth in the following article. Article 4. Meu-"nier agrees, etc. * * * he shall have the right "to manufacture the said cordials and liqueurs in "accordance with the methods of which he is the "proprietor and which the Order of Carthusian "Monks declare to have no connection with their "methods;"

That the enterprise becoming more and more

prosperous, the Order of Carthusian Monks, fail- 2071
ing authorization, were reduced to the necessity of vesting the ownership of the business in one of their number who would, in his personal name, become the proprietor thereof in the place and stead of the incapacitated Order; that with this object, the aforesaid Father Garnier, who was still "procureur" of the Convent, in order to take advantage of the protection afforded by the law of the 28th July, 1824, registered a trademark on the 20th November, 1852 at the office of the Clerk of the Tribunal of Commerce of Grenoble, which, in conformity with the law of thet 23rd June, 1857, he 2072
renewed in 1864 in his own name; that as a matter of fact, Father Garnier ceased in 1855 to exercise the functions of "procureur general," which he had long filled, but that he continued to publicly exploit the business, paying a license tax, having a license and bringing suit against infringers, until the 9th December, 1871, at which date he executed a deed before Maitre Sourd, notary, which deed was entitled "Declaration, and in which he expressed himself as follows: "My great age no "longer allowing me to continue usefully the sup- "erintendence of the manufacture of liqueurs, cor- "dials and other products known as products of 2073
"the Grande-Chartreuse, I declare that I abandon "unconditionally, and in so far as necessary, trans- "fer to Mr. Gabriel Alfred Grézier, 'procureur' of the "Convent, all the rights resulting from the registra- "tion of the trademarks, labels and models of bot- "tles at the office of the Clerk of the Tribunal of "Commerce of Grenoble * * * * * * And "in view of the fact that my signature, which ap- "pears on the aforesaid labels, may have acquired "a certain commercial value * * * * * * * "I authorize the said Grézier to continue the use

2074 "of my name." That the latter appeared before the notary at the same time, and declared that he accepted the aforesaid assignment, transfer and authorization.

Whereas there is written in the margin of this document the following note, bearing date six days subsequent thereto: "At the express requi-"sition of the 'Receveur des Domaines' (Public "Official who collects taxes and dues) and solely "for the purpose of serving as a basis for the cal-"culation of stamp dues, I declare that the rights "assigned and transferred by the said Garnier in
2075 "this deed may have a value of one hundred francs. "Executed this 15th day of December, 1871, at "the Grande-Chartreuse.

Signed. A. GREZIER."

Whereas Lecouturier claims that the business and its material elements, of which there is no question in this document, have not been assigned to Grézier, who could not therefore in his turn transfer them to the Abbé Rey; but whereas it is necessary to remark that the law of the 28th February, 1872, not being in existence at the date of the deed in question, the assignment of the business outside of any deed and without it being poss-
2076 ible for the "Enregistrment" (Stamp Office) to raise any claim, might have been made by a verbal or hand-to-hand transfer, without any control whatsoever; whereas it is even certain that things were done in this way, and that Grézier did indeed take possession, for he took out in his name, with a declaration of substitution, a license from the "Régie" (Revenue Office,) paid the license tax, and had therefore in the eys and to the knowledge of everybody—the authorities as well as the public—taken over from the date in question the estate of Father Garnier, but in order to use the trademark,

which was the necessary accessory of the business already delivered and which would be useless without the said business, it was necessary to have it registered in the name of the new titulary, who had to effect personally the deposit thereof: hence the necessity for the deed *sui generis* of the 9th December, 1871, assignment, transfer or authorization, which transferred to Grézier the trademark and its accessories together with the right to use the name of Garnier; whereas no price was paid for this assignment of the trademark, the paltry sum of 100 francs being mentioned solely for the purpose of the registration fees: 2077

Whereas the good faith of these changes is more than doubtful; whereas in fact, if Garnier, the real owner, had made a proper transfer to Grézier, with the object that the latter should in his turn become the real owner, it is difficult to admit in the first place, that a business of such importance should have been verbally transferred, without any document and without any price or receipt being stipulated, or even indicated, and in the second place, that the trademark, which was of great industrial value and the principal asset of the business, could have been abandoned gratuitously by the singular declaration of the 9th December, the assignor thus stripping himself in order to benefit a person between whom and himself there existed no lien but that of the Order; whereas, on the contrary, the transaction becomes perfectly clear and explicit if it was merely question of a simple declaration by which Garnier transferred to Grézier a confidential mission which had become too onerous for himself in view of his great age, and which consisted in superintending the manufacture of the liqueurs and managing the business carried on for the account of the Order of Carthusian Monks; 2078 2079

2080 Whereas in such case it suffices, without other formalities or precautions, to take the measures strictly necessary in order to give to a situation which is in fact contrary to the law but in regard to which the parties are agreed, a semblance which will allow it from a legal point of view to contend against infringers, such measures securing, under the cloak of successive assignments, the permanent continuance of a long tolerated regime, which is not threatened by any proposed law and which notwithstanding its precarious condition, seems to be in no immediate danger;

2081 Whereas the contract of the 20th November, 1897, setting forth the acquisition by the defendant of the business in litigation, does not a *priori* raise the serious objections above set forth, which are raised by the document of the 9th December, 1871; whereas it is in due form, is skillfully worded and is complete; whereas finally, all precautions have been taken therein to comply with the law passed in 1872 regarding the transfer of business establishments, and to guard against the dangers which a new legislation, which had been for some years in course of development, would surely create for religious orders;

2082 Whereas it results, however, from the above montioned contract, that the establishment founded under the conditions hereinbefore described by Garnier, general "procureur" of the Grande-Chartreuse, after having been transferred by the said Garnier to his successor, the "procureur" Grézier, was in turn transferred by the latter to the defendant, who exercises the same functions; that in this way the exploitation of this rich commerce of liqueurs, which was always carried on under the name of one member of the Order of Carthusian Monks and designated by the very title of the Order itself, every bottle reproducing in the glass of which it

was composed a cross over a globe, representing 2083
the motto of the Order *"Stat Crux dum volvitur Orbis,"* was continued always under the same conditions, the whole of the profits thereof, that is to say, more than three million francs, being devoted to the charitable works of the Order and to the realization of the object indicated in Articles 1 and 2 of the Statutes; whereas it is the duty of the Abbe Rey, apart from his ordinary functions, to fulfill this moral obligation as regards the use to which the profits are put, which moral obligation is not inserted in the contract, and whereas he faithfully performs this obligation as he has himself declared and as is shown by the report of the 2084
experts, Messrs. Dournon and Arnaud, and by the memorandum addressed to the Chamber of Deputies in 1903 in support of the petition for authorization; whereas it is of public knowledge that all the help, relief and alms distributed are due to the generosity of the Order itself, as for example, the installation and support of the Hospital of Saint-Laurent-du-Pont and of the School for Deaf Mutes at Curriére; whereas all requests for help are addressed to the Convent and not to Grezier and Rey in their personal names;

Whereas the defendant, struck by the anomaly 2085
resulting from his capacity as owner of the business and the fact that all the profits realized go to benefit the Order and its works, claims, in order to reconcile his allegations with a fact which goes to contradict them, that he is the owner of the working capital, and that as regards the profits there exists a partnership of fact between all the members of the Order, acting *ut singuli*, to whom the revenues are handed over, in order to be enjoined by them in common and to secure to them, in this community of interests, the means of satisfying all their personal or other expenses; whereas such a

2086 situation could in fact be easily understood, especially under the provisions of the Civil Code solely, in the case of a religious association the members of which devoted themselves to teaching or preaching and who participated in the same work; but whereas this situation is more difficult to understand as regards the members of a religious body scattered about in the different institutions of the Carthusian Monks in Europe, far from one another and from the world, withdrawn to their cells and vowed to a life of meditation; whereas, moreover, the truth of this hypothesis, even though it were consistent with the law of 1901, is refuted in the
2087 present action; whereas a partnership of fact would entitle the members when quitting the Order to a certain share of the assets of the business, but whereas articles 11 and 12 prohibit in the most formal manner any member quitting the Order from claiming for any reason whatsoever any sum or indemnity of any kind; whereas therefore the theory is inadmissible that a common patrimony, resulting from an alleged partnership of fact between all the members of the Order of Carthusian Monks, existed until such time as a division should be made, such division never having taken place and
2088 the members of the Order never having had at any moment whatsoever the right to own any undivided share of the profits realized by the exploitation of the business managed by Father Rey;

Whereas in order to resist the claim against him, Father Rey invokes the numerous decisions rendered both in France and abroad from 1853 down to recent years, which declared Garnier, Grézier and Rey successively to be the individual owners of the trademark and the business; but whereas these decisions do not constitute *res adjudicata* but are essentially relative and of no effect except between the parties and for the same object as the

actions in which such decisions were rendered; 2089
whereas therefore these decisions cannot be pleaded against Lecourturier; whereas further the said decisions are not open to criticism, because they were rendered in actions against infringers who contested the right of the defendant to the trademark in order to benefit by the false situation of the Order; whereas the situation of non-authorized associations, non-existent in the eyes of the law but tolerated in fact, imposed this prætorian jurisprudence upon the judges who, without going deeply into the matter, attached more importance to appearances, with a view to refusing the protection 2090
of the law to persons who were unworthy of it, as in the same way they would have refused to acquit a thief upon the plea that he had fraudulently appropriated the goods of an unauthorized association; whereas reasons of the highest morality, of practical utility and justice thus led them to the adoption of a system of which no one has even contested the imperious necessity, except Bonal or some other unscrupulous manufacturers interested on the same grounds;

But whereas the question is to-day presented under totally different conditions and in terms in which it was not previously laid before the Courts; 2091
whereas the adversary of Father Rey, instead of being a person of dishonest intentions, is the representative of justice and raises the question directly and on the main point, is armed with documents and arguments not hitherto presented and is acting in execution of the new law which has pronounced the full, complete and entire dissolution of all associations, whether authorized or unauthorized;

Whereas the arguments of the Abbe Rey have no better grounds when he claims that the Administration of the "Enregistrement" recognized the property as belonging to him, 1°, by charging more

than 200,000 francs tax upon his acquiring title; 2° by never having claimed the "*taxe d'accroissement*" (augmentation tax) on the industrial installation at Fourvoirie, the business and the trademark, these goods not being owned by the Carthusian Monks *ut universi* and the individual ownership thereof having been successively transferred by the deeds executed in favour of Father Garnier, Father Grézier and the Abbé Rey; 3° by admitting, in 1898, after a minute investigation, that the profits realized by the business should no longer form the basis of the tax of 4% due on the property possessed or occupied by authorized or unauthorized religious associations, although this tax had been unduly collected without protestation after the promulgation of the law of the 28th December, 1880, until the refusal of Rey, lawfully claiming exception for his individual property (See Decision of the Administration of the 12th July, 1900);

Whereas as a matter of fact the Administration of the Enregistrement has neither the power nor the competency to contest the good faith of documents presented to it, and it is no part of the duty of such Administration to examine whether the judicial situation in which parties are placed ostensibly does in reality correspond to their intention; whereas the collection of taxes is regulated by the conditions set forth in the documents or declarations of interested parties, and therefore does not involve any recognition that taxes have been collected from real and veritable owners, but simply that documents in due form indicated such persons as the apparent owners; whereas therefore the decisions of the Administration have no weight in so far as the question of ownership is concerned, and such decisions leave the point relative to the appointment of a passive trustee entirely undecided;

Whereas from another point of view, it is a matter of surprise that Rey, in his individual capacity, should have made a purchase of such importance, without taking the precaution of securing to himself the possession of the buildings where the industry was carried on; whereas in fact he acknowledged before the experts that he had no rights in the real estate at Fourvoirie, which was occupied by him on suffrance, solely at the pleasure of the Prior of the Grande-Chartreuse, who could at any moment have withdrawn *ad nutum* this privilege, for example, by requesting the Abbé Rey who owed him absolute obedience, to repair to another Convent of the Order situated at the other extremity of France, and this without giving any reason for such request; whereas it only occurred to the defendant to guarantee himself against such an event on the 21st of September, 1901, at which date a lease of the factory and its appurtenances was executed in his favour at a yearly rental of 50,000 francs, not including expenses, such lease to take effect from the date of the 30th June previous, which was the eve of the passing of the law relative to associations; whereas this purchase in his personal name is still more surprising if we recall the fact, that beides the precarious situation resulting from the aforementioned privilege which depended upon the will of the Prior General, grantee in virtue of the Order of 1816 and the Decree of 1857, the situation was equally precarious on account of the right of the Government to withdraw the grant at any moment; that this withdrawal was not a purely imaginary threat after the law proposed by Mr. Ballu which was submitted to the Legislature in 1880 and which, if it had been voted, would have certainly entailed both the obligation to quit the Convent and Fourvoirie and the deprivation of the use of the commercial name "Liqueur

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manufactured at the Grande-Chartreuse;" whereas it was impossible that the defendant could have concealed from himself the fact that the deprivation of the name by which his products enjoyed a universal reputation meant the ruin of the business which he had purchased for a sum of 4,500,000 francs;

Whereas this very notice, paid in cash at the signing of the document, furnishes a powerful argument in support of the claim of the Liquidator; whereas it is necessary to enquire how as a matter of fact the Abbé Rey, whose personal fortune was extremely modest according to the documents produced at the hearing, could have paid such a sum as this; whereas he pleads that an account was opened at the branch office of the Credit Lyonnais at Grenoble on the 2nd November, 1897, at which date the sum of 3,600,000 francs was advanced to him; whereas it is important to remark in the first place, that as regards the balance of the purchase price, that is to say about 850,000 francs, he offers no explanation, and that in the second place, as regards the 3,600,000 frs. his declaration, which he has since confirmed in person, is far too insufficient notwithstanding what he says; whereas the sole guarantee that he could offer was the business itself, of which he only became owner on the 20th November following; whereas therefore this guarantee did not exist at the time of the above-mentioned advance, and had the defendant died during the period which elapsed between the advance as aforesaid and the sale, the Credit Lyonnais would have had no security for this large sum of money; whereas therefore the explanation offered by the defendant is not acceptable; whereas moreover it is obvious that a credit institution, managed by a Board of Directors even more prudent and more

particular than a private banking establishment, would not and indeed never did consent to make such an advance to a private person, no matter how worthy of confidence as regards morality and probity, without requiring the deposit of securities as guarantee, or a surety; whereas it is obvious therefore that the Credit Lyonnais made the advance of 3,600,000 francs to the wealthy Order of Carthusian Monks, represented by Father Rey, director of its temporal affairs, and not personally to the latter, who was at that time without resources, on the faith of his intention to shortly purchase the business exploited in the name of Father Grezier; whereas this conclusion is forced upon us all the more that though the defendant notwithstanding his vow of poverty, which the law ignores, had without any doubt the right to deal in colossal transactions on his own behalf and to possess millions of money, it is of public knowledge and cannot be denied that he was faithful to the rules of the Carthusian Order and still continued in 1897 to observe publicly and scrupulously all the precepts of the religious life to which he had vowed himself; 2101 2102

Whereas finally, after the closing of the Convent of the Grande-Chartreuse, the industrial exploitation belonging exclusively to the defendant ceased immediately, though he claims to have severed by his secularisation all the ties which bound him to the Order; whereas he has not since manufactured at Fourvoirie, notwithstanding the Order of the Referee of the 4th April, 1903, which by limiting in a certain measure the powers of the liquidator, secured a continuation of the working of the factory; whereas the employees have left and the factory is closed, and thus the Abbe Rey has deprived himself of all profit on the capital employed in his acquisition, which for more than a year has been 2103

2104 unproductive; whereas some of the Brothers and Fathers of the Order of Carthusian Monks have since their dissolution established themselves at Tarragona, where Father Dom Urbian has made the necessary declaration as a distiller, and the manufacture which has been abandoned at Saint-Laurent-du-Pont has been commenced in Spain, with the same methods as those which Father Garnier, titulary holder of the first trademark registered, declared as early as 1842, in the compromise effected with Meunier, to be the methods employed by the Order of Carthusian Monks;

2105 Whereas the foregoing presumptions taken together are important, categorical and agree with one another in such manner as to be convincing proof that, notwithstanding appearances, Rey, then member of the Carthusian Order, did not on the 29th November, 1897, acquire for himself the business in litigation with its accessories and trademarks, that he has never had the *animus domini*, and has been in reality nothing but a passive trustee appointed by the Order of which he was a member, and that his legal incapacity made it impossible for him to be the owner of the aforesaid business; whereas the deed of sale in question should

2106 therefore be cancelled as fictitious and false, the name of Father Rey having, in the same manner as the names of Father Garnier and Father Grezier; figured in the place and stead of the Order of Carthusian Monks, veritable owner in fact but incompetent to own in law; whereas Lecourturier in his official capacity is therefore justified in requesting that the business of the manufacture of liqueurs with all its accessories be declared property held by the Order of Carthusian Monks, and be included for this reason in the totality of assets to be liquidated;

On the question of costs: 2107

Whereas the costs of the action of Gervais Garnier, which is dismissed, and of the action of Bonal & Sons, which is without sufficient cause, should be paid by the aforesid parties; and whereas the costs of the principal action should be borne by Rey, who has failed in his defense of the suit brought by Lecourturier, and the costs relative to the incident regarding private correspondence should be borne by Lecourturier;

Dismisses the complaint of Gervias Garnier;

Dismisses the complaint of Bonal & Sons, and in so far as necessary, of Bonal senior, admissible as to form but without sufficient cause; 2108

And adjudging upon the action in recovery of property brought by Lecourturier in his official capacity against Rey, refuses to allow the production of the confidential correspondence seized at Beauregard, by reason of the respect due to the secrets of private correspondence, and of the impossibility of using such letters in a civil action which is foreign both to the writer thereof and to the addressee; declares that the business of the manufacture of liqueurs, cordials and other products exploited at the Grande-Chartreuse and at Fourvoirie under the commercial names of "Liqueur manufactured at the Grande-Chartreuse," "Vegetable Elixir of the Grande-Chartreuse" and "Products of the Grande-Chartreuse," including the goodwill and clientelage, the ownership of the trademarks and commercial names used to designate such products, together with the models of bottles, flagons, boxes and cases employed to contain them, the exclusive right to the industrial and commercial name L. Garnier, the furniture, machinery and tools of every kind used in the exploitation, the goods, raw material, manufactured goods actually in the storehouses, cellars and warehouses, and all 2109

2110 other accessories and appurtenances generally whatsoever belonging to the aforesaid business, which were the object of the deed of transfer of the 20th November, 1897, are in reality the property of the Order of Carthusian Monks, the aforesaid deed being null and void as executed in favour of Rey, a member of the Order, whom the liquidator has proved, by a series of presumptions which are serious, categorical and agree with one another, to be a passive trustee appointed by the Order of Carthusian Monks; declares therefore that the aforesaid business together with all its accessories, including the trademark, is property held by the
2111 Order in virtue of the terms of paragraph 3, Article 18, of the law of the 1st July, 1901, and that such property forms part of the assets to be liquidated;

Orders Garnier and Bonal to pay the costs of their respective proceedings;

Orders Rey to pay the costs in the suit brought by Lecourturier, except in so far as concerns the incident relating to the production of the private correspondence seized at Beauregard, which costs shall be borne by the latter.

Thus adjudged and pronounced by the First
2112 Chamber of the Civil Tribunal of First Instance in the Arrondisement of Grenoble (Isere) in the usual room of its sittings in the Palace of Justice, place St. Andre, the day, month and year above mentioned, where were present
Messieurs

RABATEL, President.

Judges: In the presence of Mons. Reaume, Procurer of the Republic, assisted by Garnier, Recording Clerk.

(Signed) RABATEL, President and
GARNIER, Recording Clerk.

Registered at Grenoble, May, 2, 1904, folio 28, case 7.

(Here follow usual certifications, etc.)

Exhibit Judgment May 17, 1904. 2113

(TRANSLATION.)

May 17, 1904—Order.

(Seal French)
(Republic.)

Extract from the minutes of the Records of the Civil Tribunal of the First Instance of the Department of Grenoble, Isere.

FRENCH REPUBLIC. 2114

IN THE NAME OF THE FRENCH PEOPLE:

Mons. Ernest Rabatel, President of the Civil Tribunal of the First Instance of the Department of Grenoble (Isere) assisted by Mr. Garnier, Recording Clerk, has rendered on the 17th day of May, one thousand nine hundred and four, an order in chambers, of which the following is the text:

Between Mr. Henri Lecouturier, judicial administrator at Paris, acting as receiver and liquidator of the dissolved Congregation of the Chartreux, Plaintiff, by writ of the 28th April, 1904, on the one part.

Mr. Celestin Marius Rey, Priest, residing at Fourvoirie, in the Commune of St. Laurent-du-Pont; defendant on the other part; 2115

And Messrs. Bonal and Son, and if necessary, Mr. Hyppolyte Bonal, senior, manufacturers of cordials, residing at Saint Laurent-du-Pont, intervening by writs of the 3rd, 10th, and 11th May, 1904, of the one part; and the other parties defendant to this action of the other part:

Having heard Maitre Guignier, solicitor for M. Lecouturier, assisted by his client, and Maitre Rivail, his counsel, on their motions asking that we

2116 please to decree that within twenty-four hours from the judgment, Abbe Rey shall be required to hand to the plaintiff, or his representatives, the keys of the factory of Fourvoirie, together with all the books, registers of accounts, documents, and papers relating to the business in question, with all trademarks registered both in France and foreign countries; that M. Lecouturier may if need be seize them; that in default of Abbe Rey handing said keys, the plaintiff shall be authorized, by calling for assistance on the officers of the Public Force, to enter into the buildings at Fourvoirie, and to eject therefrom said Abbe Rey, so that the plain-
2117 tiff may proceed to all measures of maintenance and administration which the law confers upon him.

To sentence Abbe Rey to pay the costs and to decree that the judgment shall be executory provisionally, notwithstanding opposition or appeal, and without bond, instantly, and before being recorded. Under express reserve of all other rights, means and actions.

Having heard Maitre Esprit, solicitor for Abbe Rey, assisted by Maitre Morin, counsel, on their motions asking that it please us to declare our-
2118 selves not competent either on the ground that there is no urgency or that there is a case pending between the parties in which Lecouturier has used the same pleas as those of the summons under reference of the 28th of April, 1904, or because the Judge in Chambers cannot act in prejudice of the principal:

To sentence Lecouturier to pay the costs.

Having heard Maitre Porte, counsel for Bonal Senior and Junior, on his motion asking that we please to accept them as interveners in the case in reference, and upon admitting such interveners to decree and adjudge that the demand for provis-

ional execution entered by Lecouturier is not ad- 2119
missable in form, as all parties to the suit have not been summoned in the reference; to decree that the Judge in Chambers is not competent in the case, to decree that there is no ground either in law or in fact to order such provisional execution, to refuse the demand of Lecouturier, and to sentence him to pay the costs.

Having heard Maitre Guignier, solicitor for Lecouturier, in his further motions that we please to refuse Bonal Senior and Junior a right to intervene, and to dismiss their motion as non-admissible and unfounded, and to sentence them to pay the costs. 2120

By a summons of the 28th of April last, Lecouturier acting in the capacity aforesaid, has summoned Abbe Rey for hearing in chambers before us, on the 4th day of May of the current year for the purpose of the motions hereinabove stated. At this hearing, upon the demand of the parties, the case has been adjourned to the 17th of May. In the interval, and by three writs of the 3rd, 10th, and 11th May, 1904, Bonal Senior and Junior have notified their intervention by entering the pleas hereinabove reproduced. The parties present or regularly represented at our hearing of this day, 2121
have respectively made and set forth their respective arguments, and we have pronounced the following decision::

Whereas, by writ of the 28th of April, 1904, Lecouturier acting in his capacity aforesaid, has summoned Abbe Rey before us for the hearing of the 4th of May of the current year, to hear judgment that within twenty-four hours of the judgment, the latter should be held to hand to the petitioner, or to his representative, the keys of the factory of Fourvoirie, together with all the books, documents, and papers in respect of the business there carried

2122 on, and all the trade-marks registered both in France and abroad, that in default of Abbe Rey handing said keys, the petitioner shall be authorized by calling upon the assistance of the officers of the public force to enter into the building and eject therefrom Abbe Rey, so as to proceed to all measures of maintenance and administration which the law confers upon him, and to hear himself sentenced to pay the costs.

Whereas, the case upon the demand of the parties has been adjourned to the present hearing, where the motions above transcribed have been respectively received and set forth.

2123 With respect to the intervention of Bonal:

Whereas, the question at issue affects the powers which Lecouturier pretends to hold under the law of the 1st of July, 1901, and as only provisional measures are involved which cannot prejudice the principal; whereas Bonal has no right to intervene in this case, which does not, as he inexactly stated in his intervention, bear on the point of finding if the provisional execution of the judgment of 23rd of April, 1904, will be ordered or not by the President, in which case he should have been summoned as having been a party in the action cited as above,

2124 which was desired to be modified, therefore his intervention must be rejected as non-admissable, and as having no object.

With respect to the petition proper:

Whereas, the defendant argues our incompetence on various grounds;

Whereas, the first argument has no grounds, as the default of urgency cannot arise from the fact that Lecouturier has not moved his action sooner, and as this delay could not compromise his right; that it is, on the contrary, certain that there is to-day extreme urgency that the mark of la Chartreuse on the ownership of which nothing is yet

definitely adjudged, should be protectetd for the benefit of those legally entitled thereto against imitations; 2125

Whereas, the Criminal Court of the Seine is at the present time prosecuting cases in which Abbe Rey has refused to intervene as civil party, and as it is important that the Liquidator, in default of Abbe Rey, should assist the Public Prosecutor and obtain damages and also stop the actions of those who would be tempted to profit by the nonaction of the owner of the mark, to benefit thereby or to depreciate it by more or less skilled imitation:

Whereas, on the other part, there is no question of prejudicing the principal; whereas, Lecouturier, in his representative capacity, simply demands to exercise in a more extended manner the powers as Liquidator which he holds under the law, and of the judgment which has invested him with his powers, whereas in fact, our order of the 4th of April, 1903, has limited them so as to conciliate in a just measure and without damage to anybody his rights and those of the apparent owner, the enjoyment of which was respected to allow him provisionally to continue the manufacture of the liqueurs, but that in the matter of decisions in chambers which are always only provisional, nothing is definitely adjudged; whereas, the circumstances, which had led us to use our discretionary powers to fix the rights of the Liquidator in an equitable manner, without prejudicing anything, and without compromising anything, do not exist any more at the present time; whereas, as a matter of fact, Abbe Rey, has not thought necessary to use the power which had been reserved for him; whereas all manufacture has ceased at Fourvoirie, the stores of which are closed; whereas, it becomes much more important to give to-day to Lecouturier all the powers which fall within the nature 2126 2127

2128 of his appointment and which we could have already given by our order of the fourth of April above mentioned; whereas, the Court, upon the documents which have been submitted to it, has decided on the contrary that Abbe Rey, as an interposed person, was not the true owner of the business at Fourvoirie; whereas, undoubtedly, this judgment, which has not been dispatched and served yet, is held not to exist by virtue of the adage *"Paria sunt non esse et non significari;"* but this adage, true when it is a question of proceeding to an execution, is without bearing in the present case, as the Judge in chambers can always recog-
2129 nize the request of the receiver, even if it has in view a provisional seizure of the property in litigation, if there exists sufficient probability for the assumption that such property was held by the dissolved Congegation, or for its account;

Whereas, our incompetence could not result from the fact that there exists between the parties a suit in which Lecouturier has taken the same grounds as those submitted to us; whereas, on the one hand, if in fact there had been indicated in the course of the proceedings in action claiming the mark, motions asking for provisional execution
2130 of the judgment on intervention, those motions on the occasion of a delay asked for by the Abbe Rey, and which the latter had expressly abandoned, were as a matter of fact withdrawn by Lecouturier, because they had not been filed at the bar of the Court, nor did they form the subject of any pleadings; whereas, also the Court has not replied thereto in its judgment, so as not to establish *ultra petita;* whereas, undoubtedly the provisional execution not having been ordered, the Judge in chambers would not be competent to make it, but as this is not the object of the present reference, which in fact would have no standing if the judg-

ment had been made provisionally executory, but 2131
which bears in reality on the scope of the powers to be granted to the Liquidator; whereas, essentially this question of our competence apart from the grounds submitted to another jurisdiction, must, therefore, be decided by us, and that the preceding reasons justify the allowance of the motion of the Liquidator; whereas this solution on the other hand cannot prejudice the principal, and will only allow the seizure of the subject in litigation, which has been abandoned by the apparent proprietor, so as to benefit by a carrying on of the business by the liquidation, or by leasing until it may have been otherwise adjudged by a definite decision; whereas, 2132
it must be taken into consideration that Lecouturier in his representative capacity, as he moreover acknowledges, could not interpret the order as authorizing him to sell the mark itself; whereas, as a matter of fact, if in certain cases the powers of the Liquidator can go so far as to sell throughout a business and its appurtenances, this would be practically a considerable prejudice and would prejudice the business as the ownership of the mark is the principal subject of the litigation.

Therefore, we, the President, sitting in chambers, after hearing the solicitors and counsel of the parties, 2133
declare ourselves competent, we decree that the intervention of Bonal is inadmissible, and as provisional and urgent measure without prejudging anything, authorize Lecouturier in his capacity of Liquidator and administrator of the Congregation of the Chartreux to take actual possession by virtue of article 18 of the Law of the 1st of July, 1901, of the factory at Fourvoirie, and of the business there carried on, with all its dependencies; we therefore decree that Abbe Rey shall be required to hand over to Lecouturier or his representative the keys of the factory, together with all the books,

2134 documents, and papers relating to the business in question, and all the trade-marks belonging thereto, and that the Liquidator may, if required, seize them by calling upon the assistance of the officers of the public force, so as to be able to proceed to all measures of maintenance and administration which he believes to be useful. We sentence Abbe Rey to pay the costs, with the exception of those of the intervention which shall be at the charge of Bonal. We declare this judgment subject to immediate execution, notwithstanding appeal.

Thus, adjudged and pronounced in our Chambers at the Palace of Justice, Place Saint Andre, the
2135 day, month and year above given.

(Signed) RABATEL, President, and GARNIER, Recording Clerk.

Recorded at Grenoble the 19th of May, one thousand nine hundred and four, folio 58, file 12.

Received five francs, 53 centimes.

Receiver,
(Signed) BEGOU.

2136 In consequence, the President of the French Republic orders all sheriffs & officers to carry out the present order.

To the Attorneys General, and Public Prosecutors of the Republic, at the Court of First Instance to carry out this judgment.

To all commanders and officers of the public force, to lend forcible help whenever they shall be legally required.

(Here follow certifications.)

At a Stated Term of the Circuit Court of 2137
the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States Court Rooms, in the Borough of Manhattan, in the City of New York, on the 11th day of November, in the year of our Lord one thousand nine hundred and seven.

Present—The Honorable CHARLES M. HOUGH,
District Circuit Judge.

ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, 2138

vs.

CUSENIER COMPANY.

The above entitled cause coming on to be heard on final hearing, Mr. PHILIP MAURO is heard on behalf of the complainant, and Messrs. HOWSON & HOWSON are heard on behalf of the defendant.

C. A. V. 2139

2140 CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, vs. CUSENIER COMPANY.	On final hearing in Equity.

2141 *A preliminary injunction was issued herein on January 11, 1905. Upon appeal this order was modified, 141 Fed. Rep., 497.*

PHILIP MAURO, C. A. L. MASSIE and RALPH L. SCOTT, for Complainants;
HOWSON & HOWSON, for Defendant.

HOUGH, *D. J.:*

Prior to 1901 the Carthusian Monks, of whom the complainant herein is the Father Superior, conducted a manufacture of liqueurs near their chief monastery and not far from Grenoble, France.

2142 The history of this business is sufficiently set forth in *Bauer* vs. *Order of Carthusian Monks*, 120 Fed. Rep., 78; and it is for the purposes of this case sufficient to state that the evidence herein supports the statement of fact there made.

In the United States the liqueurs in question have long been known, traded in and consumed by the name "Chartreuse."

This word is not a place name and never was; it is the French term for a kind of building, *i. e.*, a Carthusian monastery; but for American commercial purposes it means, and long has meant, a certain drinkable manufactured by that branch of the Car-

thusian order living near Grenoble in La Grande 2143
Chartreuse, *i. e.*, the monastery occupied by the Father Superior (*cf. Siegert* vs. *Gandolfi*, 149 Fed. Rep., 100; *Bauer* vs. *Siegert*, 120 Fed. Rep., 81).

On July 2, 1901, the French "*Loi relative au contrat d'association*" became effective. By that statute the ecclesiastical association which had for hundreds of years occupied the Grande Chartreuse, and for a considerable fraction of that time manufactured liqueurs near by, became unlawful. Under French law the effect of such illegality was to disable the association as a legal entity, or any trustee (*personne interposée*) for the associators, either to obtain or retain property for association purposes.

In order, therefore, to conserve such property for 2144
the persons entitled thereto, a receiver (liquidateur) was appointed, who seized what he could discover, including the liqueur factory near Grenoble.

The persons entitled to the seized property, parts of which seem to have belonged to the Order for centuries, do not appear in the evidence; further than that neither the individual monks nor any of them were so entitled unless it should ultimately be directed either by judicial or legislative action that the proceeds of the sale of the seized property be applied to defray such pensions as might be payable or thereafter granted to indigent surviving monks.

This exposition of the law of France is given by defendant's witness M. Millerand, Minister of Com- 2145
merce at the time the law was enacted, a Member of the Chamber of Deputies, an attorney at law and and counsel for the Receiver.

It does not appear that the Receiver ever obtained any judicial authority to continue or revive the business of manufacturing liqueurs, nor is it clear that French law requires such authorization.

Before the receiver assumed possession the Monks had departed, leaving behind as little as possible; especially taking with them all certain knowledge of the formula or recipe for their liqueurs. The receiver, however, seems under the law of France to

2146 have become possessed of the trade-mark "Chartreuse," although he found no business to accompany it and had no ability to make, or knowledge of making, the article covered by such trade-mark.

He thereupon employed men of science, who by analysis and experiment produced a liqueur which may be identical with, and certainly closely resembles, the monkish cordial, and this he sold under the same labels and in the same bottles as had long been used by the Carthusians. Thus the liqueur of the receiver (whose title is that of the defendant) is in appearance and style of wrapping identical with that of the Monks, solely excepting the mark of the printers of the label, in which particular a
2147 variance exists, but only because the firm which had printed for the complainants refused the receiver's repeatedly proffered trade.

The Carthusians being thus dispossessed, removed their ecclesiastical establishment to Italy, but set up in Spain their cordial factory; importing from the neighborhood of Grenoble certain herbs locally grown and constituting one of the known ingredients of their liqueurs.

This action is brought in substance to enjoin the receiver's assignee from vending the liqueur in the United States under the old labels, and the defense has two branches: *First*, that the French proceedings above outlined have vested in defendant title to the
2148 old trade mark; and, *Second*, that the complainants have either abandoned such trade-mark or estopped themselves from asserting it by the course and conduct of their business in Spain.

The first defense rests upon the assumption that what was done in France did or could possess extraterritorial validity; or affect any property of complainants in the United States.

It is not denied that on July 2, 1901, complainants possessed a valuable asset in this country—*i. e.*, the right to vend their produce under certain brands and labels and in bottles of certain size, shape and marking; which right had long existed, had re-

ceived the recognition of federal trade-mak registra- 2149
tion and been vindicated in our Courts (*Bauer* vs. *Order of Carthusian Monks, supra; Grezier* vs. *Gerard*, unreported and decided in this Court April 13, 1876).

This American property did not pass to the receiver, and could not enure to his benefit or that of his assignee by any proceeding taken against complainants in France.

Some strength might be found in defendant's argument had the receiver become possessed of the business that produced the product indicated by the trade-mark. This he did not do; a business does not inhere in a place or a building, nor depend for validity upon continuance in one locality or country. 2150
When the monks fled from the rigor of French law they took their business with them; the testimony shows that it exists to-day in Spain, and while they continue to transact it there or elsewhere no law but that of the United States can deprive them of the lawful fruits thereof in this country.

The second defense is based upon the admitted fact, that finding the French market for Chartreuse made in Spain and bearing the old labels closed to them by French law, complainants devised a new form of package, wholly unlike the old, and have for some years pressed that upon the market both in Europe and America, at the same time warning the public by advertisement that the old label and bottle 2151
no longer denote the genuine Chartreuse of the Carthusians. This is all true, with the addition that complainants have taken care to put up some liqueur under the old label and vend it, in order to negative intentional abandonment while litigations more or less resembling this cause have been pending in most countries other than France.

The defense now under consideration is affected by the same fallacy as the first, viz.: the thought that the liquidateur is the successor of the monkish industry. Nothing could be further from the truth.

2152 He and all claiming under him are rivals in business, enjoying the advantage of governmental protection in the country of his appointment.

If one entitled to a trade-mark does abandon it; that does not justify a rival in appropriating the same and using it to induce the public to believe that the rival's product sold under the old label is the same thing so long and favorably known thereunder and still being sold under the new label by the original proprietor. The result of a suit to enjoin such competition cannot I think be doubted.

The only difference between the case supposed and that at bar is that the rival's right to the label and the use thereof arises from the coercion of a
2153 foreign statute and proceedings thereunder, with which from a foreign point of view we are not concerned, but which by every canon of American law amount to confiscation.

Decree for complainants.

Nov. 18, 1907.

(Endorsed)—United States Circuit Court, Southern District of N. Y.—Alfredo Luis Baglin &c. vs. Cusenier Company.—Opinion.—Hough, *D. J.*—Nov. 18, 1907.—U. S. Circuit Court, Southern District, N. Y.—Filed Nov. 18, 1907.—John A. Shields, Clerk.

2154

Complainant's registered trade-marks are referred 2155
to in the decree, not because any additional rights were conferred by such registration, but only because complainant's trade-mark is "set forth" in the trade-mark certificates referred to.

Enjoining the defendant from proceedings obnoxious to the decision herein in the "possessions" of the United States raises a curious question. Exactly what force the decree herein would have in the Philippines or Porto Rico need not, however, be considered; but it *is* intended to prevent the defendant, who is within the jurisdiction of this Court, from doing anything *here* tending to build up a trade in the prohibited article in "possessions" of the United States as distinct from the 2156
United States proper. I see no reason for withholding costs. It is perfectly evident that this defendant is but the hand of the Receiver, and there is no reason to doubt that the costs awarded, if ever paid, will be so paid out of the proceeds of the property taken away from complainant.

I do think, however, that "*damages*," opens up too wide a field of conjecture; and that the ends of justice will be be satisfied if the accounting is confined to defendant's profits; and that change has been introduced into the decree propounded by complainant.

Nov. 26, 1907.

C. M. HOUGH, 2157
D. J.

(Endorsed)—Circuit Court of the United States for the Southern District of New York.—Baglin *vs.* Cusenier Company. — Memorandum. — Hough, *D. J.*—U. S. Circuit Court, Southern District, N. Y.—Filed Nov. 26, 1907.—John A. Shields, Clerk.

2158 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, held in the Court Rooms thereof, in the Federal Building, in the Borough of Manhattan, and City of New York, on the 26th day of November, 1907.

Present—Hon. CHARLES M. HOUGH,
United States Judge.

2159 PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order,
Complainants,

vs.

CUSENIER COMPANY,
Defendant.

In Equity, No. 8949.

Decree.

2160 This cause coming on to be heard on Nov. 11, 1907, upon bill, answer, and replication, and full proofs of the respective parties (comprising the testimony of numerous witnesses who were subjected to cross-examination, as well as exhibits); and Philip Mauro, Esq., for complainant, and Charles Howson, Esq., for defendant, having been heard both orally and by printed briefs; and the Court being fully advised in the premises; now, therefore, upon consideration thereof and on motion of complainant's solicitor, it is this day

1. ADJUDGED, ORDERED AND DECREED that the word symbol "Chartreuse," as applied to liqueur or cordial, is a good and valid trade-mark, and in this country has been and is now the sole and exclusive property of the Carthusian Monks or Fathers, ("PERES CHARTREUX") complainants herein; and that the said word symbol, "Chartreuse" accompanied by the fac-simile signature of L. Garnier, as set forth in U. S. Trade-mark Certificate No. 3377 registered in the U. S. Patent Office, January 25, 1876 (re-registered January 29, 1884, as No. 10,897), and in U. S. Certificate No. 3989, registered September 12, 1876, (re-registered January 29, 1884, as No. 10,898), and as appearing upon "Complainant's Exhibit, Bottle of Chartreuse sold by Batjer & Co.," constitute good and valid trade-marks, and in this country have been and now are the sole and exclusive property of said complainants the Carthusian Monks or Fathers ("PERES CHARTREUX"); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants. 2161 2162

2. It is further ADJUDGED, ORDERED AND DECREED that the defendant herein the Cusenier Company has infringed the said trade-marks and each of them, and has violated complainant's rights in the premises, by importing and causing to be imported, selling and causing to be sold, and offering for sale and causing to be offered for sale, in the United States, liqueur or cordial not manufactured by the complainants herein, but purporting to be "Chartreuse" and put up in packages having affixed thereto the trade-marks above referred to. 2163

3. It is further ADJUDGED, ORDERED AND DECREED that defendant herein the Cusenier Company has been guilty of unfair competition with complainants by importing and causing to be imported, by selling and causing to be sold,

and by offering for sale and causing to be offered for sale, in the United States, liqueur or cordial not manufactured by complainants, but put up in bottles, dress, &c., resembling in all substantial respects the bottles, dress, &c., hitherto employed by complainants in marketing their genuine Chartreuse; and particularly by selling or offering for sale the bottle of liqueur now on file in this Court as "Complainants' Exhibit Defendant's Liqueur."

4. It is further ADJUDGED, ORDERED AND DECREED that defendant, its associates, successors, assigns, officers, servants, clerks, agents, and workmen, and each of them be, and they hereby are *perpetually enjoined* from using in this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the trade-mark "Chartreuse" or of any colorable imitation thereof—or the fac simile signature of L. Garnier, or any colorable imitation thereof—or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any bottle or label or package like or substantially similar to "Complainants' Exhibit Defendant's Liqueur," being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

5. It is further ADJUDGED, ORDERED AND DECREED that the matter be referred to John A. Shields,

Esq., as Master, to take the usual accounting and 2167
report to this Court with all convenient speed the amount of defendant's profits by reason of the infringements and wrongs above referred to, together with the quantity of the infringing article now in possession or control of defendant or of any of its officers, servants or privies.

5. And it is further ADJUDGED, ORDERED AND DECREED that complainants do recover from defendant their taxable costs herein; and that execution issue for the same and for the amounts found due on the accounting.

C. M. HOUGH,
U. S. J. 2168

(Endorsed)—In the Circuit Court of the United States for the Southern District of New York. —Pere Alfredo Luis Baglin, &c., *vs.* Cusenier Company.—In Equity; Docket No. 8949.—Decree.—Philip Mauro, C. A. L. Massie, Ralph L. Scott, of Counsel for Complainants, Tribune Bldg., New York City.—U. S. Circuit Court, Southern District of New York.—Filed Nov. 26, 1907.—John A. Shields, Clerk.

2169

2170 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN *et al.* v. CUSENIER COMPANY.	In Equity, No. 8949.

Petition for Appeal.

2171

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK AND FOR THE SECOND CIRCUIT:

The petition of Cusenier Company, defendant, respectfully shows:

That on or about the 4th day of January, 1905, the above named complainants filed their bill of complaint in this Court against the defendant, alleging infringement by defendant of complainants' trade-mark rights and labels and praying that an injunction might issue restraining the defendant
2172 from infringing said trade marks or imitating the labels or making use of the name "Chartreuse" and for an accounting; that defendant thereafter appeared and answered and a replication was filed by complainants; that thereafter proofs were taken by both complainants and defendant and duly filed, together with exhibits as appears of record; that upon the pleadings and proofs so filed a hearing of the case was had on or about the 11th day of November, 1907, before the Honorable Charles M. Hough, one of the Judges of this Court, and by him taken under advisement; that thereafter, to wit, on or about the 18th

day of November, 1907, the Court filed an opinion, 2173
upon which said opinion a decree was entered on the 25th day of November, 1907, adjudging, ordering and decreeing, among other things, that the word-symbol "Chartreuse" is a good and valid trade-mark, and in this country is the exclusive property of complainants, as also the word-symbol when accompanied by the fac-simile signature of L. Garnier; that the defendant has infringed the said trade-marks and each of them, that the defendant has been guilty of unfair competition by importing and selling or offering for sale in the United States liqueur not made by complainants but put up in packages, dress, and so forth, resembling those hitherto employed by complainants; and enjoining defendant 2174
perpetually from using the said trade-marks or any of them, or importing or selling, or offering for sale in this country, liqueur in dress or package substantially similar to "Complainants' Exhibit Defendant's Liqueur;" and referring the cause to a Master for an accounting and awarding costs to complainants.

Wherefore, your petitioner, Cusenier Company, feeling itself aggrieved by said decree, appeals therefrom to the Circuit Court of Appeals of the United States, in and for the Second Circuit, its reasons for appeal being specified in the assignment of errors filed herewith, and defendant prays that this appeal may be allowed and that a duly authenticated tran- 2175
script of said bill and decree and of the record and other proceedings relating thereto may be presented forthwith to the said United States Circuit Court of Appeals for the Second Circuit for review therein, and it tenders herewith a bond for the costs, with a request that it may operate as a supersedeas.

HOWSON & HOWSON,
Solicitors for Defendant.

And now, to wit, on this 24th day of December, 1907, it is ordered that the above entitled appeal be

2176 allowed as prayed for, and that the bond operate as a supersedeas.

E. HENRY LACOMBE,
U. S. Judge.

Service acknowledged this 24th day of December, 1907.

ELISHA K. CAMP,
Solicitor for Complainants.

IN THE UNITED STATES CIRCUIT COURT

2177 FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LOUIS BAGLIN, Superior General of the Order of Carthusian Monks, for himself and all the other members of said Order, Complainants, *v.* CUSENIER COMPANY, Defendant.	nEq uity, No. 8949.

2178 And now comes Cusenier Company, defendant-appellant, and says that in the record and proceedings of said Court in the above-entitled case, and in the interlocutory decree made and entered therein on the 22d day of November, 1907, granting an injunction, there is manifest error, and said defendant and appellant assigns as error—

1. The Court erred in holding that the word symbol "Chartreuse" as applied to liqueur or cordial, is a good and valid trade-mark independent of the place of manufacture, and that the same has been and now is the sole and exclusive property of

the Carthusian Monks, whereas it should have held 2179
that said word symbol "Chartreuse" is not a good and valid trade-mark, and that the same is not the property of the Carthusian Monks, but so far as there are property rights in said word symbol, said rights are the sole and exclusive property of Compagnie Fermiere de la Grande Chartreuse, the defendant's consignor.

2. The Court erred in holding that the word symbol "Chartreuse" accompanied by the fac-simile of L. Garnier, as set forth in U. S. Trade-mark Certificate No. 3377, registered in the United States Patent Office January 25, 1876 (re-registered January 29, 1884, as No. 10,897), and in U. S. Certificate No. 2180
3989, registered September 12, 1876 (re-registered January 29, 1884, as No. 10,898), and as appearing in "Complainant's Exhibit Bottle of Chartreuse, sold by Batjer & Co.," constitute good and valid trade-marks, and that they have been and now are the sole and exclusive property of the Carthusian Monks, whereas it should have held that said trade-marks are not the property of the Carthusian Monks but the sole and exclusive property of Compagnie Fermiere de la Grande Chartreuse, the defendant's consignor.

3. The Court erred in holding that the complainants have the exclusive right to use the afore- 2181
said trade-marks or any of them in this country, whereas it should have been held that said trade-marks together with the good-will of the business of making liqueur formerly carried on by the Carthusian Monks of the Monastery de la Grande Chartreuse, and of selling said liqueurs so manufactured in the United States, were legally transferred to and are now the exclusive property of defendant's consignor.

4. The Court erred in failing to hold that M. Lecouturier, the receiver of the property of the

2182 Carthusian Monks at the Monastery de la Grande Chartreuse, became possessed of and succeeded to the aforesaid business of the Carthusian Monks together with the good-will and trade-marks attached to said business in France and in the United States.

5. The Court erred in holding that property rights exist in said trade-marks in the United States, independent of the business as carried on in France and in holding that the property in said trade-marks in this country could not be affected by the receivership proceedings in France.

6. The Court erred in failing to find that what-
2183 ever trade-mark rights in this country might have remained in the Monks, have become abandoned, and in not holding that said abandonment was a complete bar to complainants' action.

7. The Court erred in finding that the defendant company has infringed any trade-mark rights of complainants.

8. The Court erred in finding the defendant company guilty of unfair competition in trade, whereas it should have been held that defendant's conduct would not lead anyone to believe that the goods sold by defendant were made by complainants.

2184

9. The Court erred in holding that it does not appear that the Receiver, M. Lecouturier, ever obtained any judicial authority to continue or revive the business of manufacturing liqueurs as formerly carried on by the Carthusian Monks at the Monastery of la Grande Chartreuse.

10. The Court erred in holding that the cordial manufacturing business carried on in Spain by the Carthusians or by la Union Agricola, is a continuation of the business formerly carried on by the Carthusians in France, whereas it should have been

held that the business so carried on in Spain is a new business, and that the parties carrying on the same have no right to use the old trade-marks in connection with the product of said buiiness. 2185

11. The Court erred in granting an injunction restraining the defendant company from using the alleged trade-mark "Chartreuse," or any colorable imitation thereof, or the fac-simile signature of L. Garnier, or of any colorable imitation thereof, or any of complainants' alleged trade-marks.

12. The Court erred in granting an injunction restraining defendant from importing or putting out or offering for sale or selling liqueur not made by complainants, in dress or package similar to those used by complainants, prior to the receivership of M. Lecouturier. 2186

13. The Court erred in awarding to complainants any injunction against this defendant.

14. The Court erred in decreeing any recovery against defendant company in favor of complainants; and in referring the cause to a master to ascertain the amount of said recovery, and the quantity of alleged infringing articles now in possession of defendant.

15. The Court erred in awarding costs to complainants. 2187

16. The Court erred in failing to dismiss complainants' bill in its entirety for want of equity, with costs to defendant.

HOWSON & HOWSON,
Defendant's Solicitors.

2188 **FEDERAL UNION SURETY COMPANY.**

CIRCUIT COURT OF THE UNITED STATES OF AMERICA

FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE SECOND CIRCUIT.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for himself and all other
2189 members of said Order, Complainants,

vs.

CUSENIER COMPANY, Defendant.

Bond for Damages and Costs.

KNOW ALL MEN BY THESE PRESENTS, that the Federal Union Surety Company, a corporation organized under the laws of the State of Indiana, and having its principal office in the City of
2190 Indianapolis, Indiana, and lawfully transacting business in the State of New York, and having its principal office in said State at No. 1 Madison avenue, in the Borough of Manhattan, in the City of New York, is held and firmly bound unto the above named complainants, in the sum of four thousand ($4,000.00) dollars, to be paid to the said complainants, for the payment of which, well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with its seal and dated the 24th day of December, in the year of our Lord one thousand nine hundred and seven.

Whereas, the above named Cusenier Company has 2191
prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such that if the above named Cusenier Company shall prosecute its appeal to effect, and answer all damages and costs, if it fail to make said plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

FEDERAL UNION SURETY COMPANY,
[L. S.] By ROBERT M. NUGENT,
Resident Vice-President. 2192

Attest:
E. B. HOXIE,
Resident Assistant Secretary.

Sealed and delivered and taken and acknowledged this 24th day of December, 1907, before me.

STATE OF NEW YORK, County of New York, } ss.:

On this 24th day of December, 1907, before me personally appeared Robert M. Nugent, resident vice-president of the Federal Union Surety Company, with whom I am personally acquainted, who, being 2193
by me duly sworn, said: That he resides in the County of New York; that he is the resident vice-president of the Federal Union Surety Company, the corporation described in and which executed the foregoing bond; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the Board of Directors of the said company, and that he signed said instrument as resident vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner pro-

2194 vided by law and confirmed by an order of the Supreme Court of New York made and entered in New York County on March 30, 1904, and the said Robert M. Nugent further said that he is acquainted with E. B. Hoxie, and knows him to be the resident assistant secretary of said company; that the signature of said E. B. Hoxie, subscribed to the said instrument is in the genuine handwriting of the said E. B. Hoxie, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Robert M. Nugent, resident vice-president.

ESTHER BERG,
[L. S.] Notary Public,
2195 New York County.
Cert. filed in Kings, Queens, Suffolk, Richmond and Westchester Counties.

Copy of By-Law.

BE IT REMEMBERED, That at a meeting of the Board of Directors of the Federal Union Surety Company, duly called and held on the tenth day of July, 1901, a quorum being present, the following By-Law was adopted:

"ARTICLE VIII., SEC. 1. The President, Vice-Presi-
2196 "dent or Second Vice-President may, from time to
"time, appoint Resident Vice Presidents, Resident
"Assistant Secretaries and Attorneys in fact, to
"represent and act for and on behalf of the Com-
"pany; and either the President, Vice-President,
"Second Vice-President, the Board of Directors or
"the Executive Committee may, at any time, re-
"move any such Resident Vice-President, Resident
"Assistant Secretary, or Attorney in Fact, and re-
"voke the power and authority given him.

"SEC. 3. *Resident Vice Presidents.* Resident
"Vice-Presidents shall have power and authority to

"sign and execute on behalf of the Company, any and 2197
"all bonds, recognization, contracts of indemnity,
"and other writings obligatory in the nature thereof,
"and to bind the Company thereby as fully and to
"the same extent as the President could bind it.

"SEC. 4. Resident Assistant Secretaries shall
"have power and authority to affix the seal of the
"Company to, and attest on behalf of the Com-
"pany, any and all bonds recognizances, contracts
"of indemnity and other writings obligatory in the
"nature thereof as fully and to the same extent as
"the Secretary could bind it."

STATE OF NEW YORK, } ss.: 2198
County of New York, }

I, E. B. HOXIE, resident assistant secretary of the Federal Union Surety Company, have compared the foregoing by-law with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company, this 24th day of December, 1907.

E. B. HOXIE,

[L. S.] Resident Assistant Secretary.

(Endorsed)—United States Circuit Court, Southern District of New York.—Pere Alfredo Luis Baglin, 2199
Superior General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainants, against Cusenier Company, Defendant.—Bond for damages and costs.—Surety: Federal Union Surety Company.—Surety and amount satisfactory. C. A. L. Massie of counsel for complt.—Approved as to form and also as to sufficiency of sureties, with reservation, however, to the complainant of the right at any time to examine the proper officers of the Surety Company, under oath touching its assets, liabilities and financial condition generally. E. Henry Lacombe, U. S. Circuit Judge.

2200 By the Honorable E. HENRY LACOMBE, one of the Judges of the Circuit Court of the United States for the Southern District of New York, for the Second Circuit, to Pere Alfredo Luis Baglin, for Himself and all of the other Members of the Order of Carthusian Monks, Greeting:

You are hereby cited and admonished to appear before the United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the Circuit above named, on the 22d day of January, 1908, pursuant to an appeal filed in the Clerk's
2201 Office of the Circuit Court of the United States for the Southern District of New York, wherein Cusenier Company is appellant, and you the appellee, to show cause, if any there be, why the decree in said appeal mentioned, should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at New York, City, New York, in the Circuit above named, this 24th day of December, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

E. HENRY LACOMBE,
United States Circuit Judge.

2202

Service acknowledged this 24th day of December, 1907.

ELISHA K. CAMP,
Solicitor for Complainants.

(Endorsed)—U. S. Circuit Court, S. D. of N. Y.—Baglin *v.* Cusenier Co.—Petition for Appeal, Assignment of Errors, Bond and Citation.—In Equity, 8949.—U. S. Circuit Court, Southern District, N. Y.—Filed Dec. 24, 1907.—John A. Shields, Clerk.—Howson & Howson, Potter Building, 38 Park Row, New York.

UNITED STATES OF AMERICA, } ss.: 2203
Southern District of New York, }

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 1581, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Pere Alfredo Luis Baglin, Superior General of the Order of Carthusian Monks for himself and all other Members of said order, complainants-appellees, against Cusenier Company, defendant-appellant, as the same remain of record and on file in my office.

2204

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 22d day of January, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the said United States the one hundred and thirty-second.

JOHN A. SHIELDS,
[SEAL.] Clerk.

2205

United States Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

No. 230, October Term, 1907.

Argued April 13-~~14~~, 1908; Decided Aug. 3, 1908.

~~Peter~~ ~~Alfred~~ ~~Louis~~ Baglin, et al.,
Complainants-Appellees,

vs.

The Cusenier Company,
Defendant-Appellant.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Coxe, Ward and Noyes, Circuit Judges.

On appeal from a decree of the Circuit Court for the Southern District of New York entered on the 26th day of November, 1907. The Circuit Court adjudged:

First: That the word symbol "Chartreuse", as applied to liqueurs, is a good and valid trade-mark in this country and has been and now is the sole and exclusive property of the Carthusian Monks, who are the complainants herein, and that the label as set forth in the U. S. trade-mark certificate No. 3377 constitutes a valid trade-mark in this country.

Second: That the defendant has been guilty of unfair competition and has infringed said trade-marks by importing into this country liqueur not made by the complainants but bearing the said labels and trade-marks.

Third: That the defendant be perpetually enjoined from using in this country, or in any possession thereof, in connection with any liqueur not manufac-

5 tured by the complainants, the trade-mark "Chartreuse" or the fac-simile signature "L. Garnier" or any of the trade-marks above referred to.

FOURTH: That the usual accounting of defendant's profits be had.

A preliminary injunction granted by the Circuit Court (156 Fed. 1015) was modified by this Court (141 Fed. 497).

The opinion below is reported in 156 Fed. 1016.

6 See also Bauer & Co. v. Carthusian Monks 120 Fed. 78.

A. L. PINCOFFS, HUBERT HOWSON, CHARLES HOWSON, for Defendant-Appellant,

PHILIP MAURO, C. A. L. MASSIE, RALPH L. SCOTT, for Complainants-Appellees.

COXE, J.

The principal facts are found in the prior opin-
7 ions *supra* and need not be repeated. We think, however, that the statement of the circumstances which resulted in the complainants leaving France and setting up their distillery at Tarragona, Spain, requires some additional recital of the facts.

The defendant, at the time the answer was filed, was the agent in the United States of the receiver of the complainants' property, appointed by the French courts. Whatever title the receiver acquired the defendant acquired, whatever rights the receiver had the defend-
8 ant has.

The same is of course, true of the present owner, the Compagnie Fermiere de la Grande Chartreuse.

On July 2, 1901, the French Associations Law was promulgated. With the intent and purpose of this measure we have nothing to do. The lawmakers deemed it necessary for the perpetuity of the Republic and it has been upheld and enforced by the courts of France. Pursuant to this law, on March 31, 1903, the Court of First Instance of Grenoble dissolved the Order of Carthusian Monks, sequestered its entire property

and appointed M. Lecouturier receiver. On April 23, 9
1904, the same court, in an action between the receiver and Abbé Rey and others, adjudged that the business of manufacturing liqueurs at the Grand Chartreuse, including the good-will, clientage, trade-marks, commercial names, models of bottles, flagons, cases, furniture, machinery, raw material, manufactured goods and the exclusive right to the industrial name L. Garnier, was the property of the Monks and passed to the receiver to be liquidated. This judgment was affirmed by the Court of Appeals of Grenoble and the 10
appeal to the Court of Cassation was dismissed. It thus appears that, when this action was commenced, every right and title which is in dispute here, every item of property claimed by the complainants, whether corporeal or incorporeal, tangible or intangible, were, so far as France is concerned, vested in the receiver who is represented by the defendant.

The acts which the complainants seek to restrain were lawful in France, the liqueur being manufactured, bottled and labeled at the Grand Chartreuse, and sold 11
under sanction of French law. Such a bill as we are now considering would not stand for a moment in any court of France. Of this there can be no question.

The situation as to the Monks is also anamalous. Had they chosen to do so they could, with some necessary changes, have used the old labels and trade-marks in Spain, but they have seen fit not to do so, probably because the labels would have been prohibited in France and they would thus have lost the French market. They could not have used the trade-mark in 12
the form as registered, for it would have been a falsehood and a fraud on the public to assert that liqueur made at Tarragona, Spain, was "Fabriquee a la Gde Chartreuse" in France. Especially would this be an unfair statement in view of the oft repeated assertion of the complainants that their liqueur derived its peculiar excellence from the plants and herbs grown in the Alps in the vicinity of their monastery. However this may be, the Monks, since establishing themselves at Tarragona have *de facto*, though

13 not *de jure*, abandoned the old labels and insignia. Their object seems to be to depart as far as possible from the former methods of dressing up their goods. One of their advertisements, containing a picture of their new bottle with labels attached, is as follows:

"The Peres Chartreux dispossessed in France of their old trade-marks, sold at auction, have carried away their secret and manufacture at Tarragona.

Demand this new bottle in asking for the 'Liqueur of the Peres Chartreux' (Tarragone) or simply 'A
14 Tarragone.'"

Their new labels and marks are totally different from the old ones and they have been particular to caution the trade that no liqueur is genuine unless bearing the new label. Their agent's circular states: "While formerly the Liqueur derived its name from the Monastery of La Grande Chartreuse, circumstances have rendered it necessary, under the new conditions, to name it Liqueur Peres Chartreux, after the order of Monks owning the secret process employed
15 in its manufacture."

Assuming the right of the complainants to use the old trade-marks, it is manifest that they have not used them since their departure from France, do not wish or intend to use them and, should they do so, it would still further complicate the situation and vex the trade, with no corresponding benefit to anyone. The complainants have established a new demand for their liqueur under the new labels, purchasers have learned to recognize the Monks' goods by these labels and it
16 would exhibit a lamentable lack of business sense for them to return to the old label, even if they could do so legally and truthfully.

It will be observed that at no time have the complainants designated their liqueur as "Chartreuse" on any of their paper labels. That name has been used by them principally when advertising the fact that their liqueur was "made at the Grand Chartreuse," in the same way that they now say it is made at Tarragona. There can be little doubt, however, that the name in time came to indicate the liqueurs made at the mon-

astery in the French Alps by the Monks residing 17
there. It may be doubted whether, in this country at least, the name indicated any particular order of Monks. Its primary meaning was undoubtedly geographical but it acquired afterwards a secondary meaning, so that a purchaser prior to 1901 ordering a case of "Chartreuse" would expect to receive liqueur made by Monks at the French monastery.

It is not easy to believe that a person, familiar with all the facts relating to the migration of the Carthusians to Spain, could be deceived by the labels at 18
present used by the defendant.

The bill alleges on information and belief that since the removal of the complainants from France, certain persons without the complainants' consent have made a spurious imitation article falsely representing that it is made pursuant to the famous recipe of the complainants and that the defendant has imported large quantities of the spurious article, under the trademarks and labels still owned exclusively by the complainants, and has sold the same to 19
the American public. All this the defendant denies. The writer is of the opinion that as the complainants have alleged that the defendant has deceived the public by palming off a spurious liqueur for the genuine article, it is incumbent upon them to prove the accusation.

It is, of course, unfortunate for the complainants that their liqueur is made under a secret formula which, naturally enough, they decline to disclose; but without such disclosure we are unable to say with any 20
degree of certainty that the two liqueurs are not substantially alike. A charge that defendant is perpetrating a fraud must be established by something more than opinions and conjecture, and especially is this true, where the party upon whom the burden rests has it in his power to establish fraud, if it exists, by proof which it will be practically impossible to contradict.

We intend no criticism of the complainants' course in this regard. It is undoubtedly more profitable for

21 them to maintain secrecy, and they are under no obligation to do otherwise. But they cannot complain if the court is unable to find that the defendant's liqueur is materially different from theirs without knowledge of its ingredients and the process by which they are combined. It is true that experts called by the complainants denounced the defendant's liqueur as exceedingly bad, so bad in fact that the veriest tyro cannot be mistaken and yet, when asked to make the test in the presence of the commissioner they invaria-
22 bly declined.

One of these, M. Dubonnet, testified as follows:

Q. You could make sure of distinguishing this liqueur from the real Chartreuse?

A. I do not know if I ought to reply. I have tasted liqueurs enough; but one can be deceived. When I taste I taste calmly, wisely, I take precautions.

Q. Will you make the experiment now?

A. No, because it is very delicate.

23 Another witness, M. Brezun, testified:

Q. Do you consider yourself capable of distinguishing the Chartreuse made by the Carthusians from those made by the imitators?

A. Certainly.

Q. Will you give a proof of it at once?

A. No, it is necessary to do that in the quiet of the office, when resting, with due consideration; that cannot be done in the state of nervousness in which I am at present".

24 It would seem, therefore, that the discovery of the difference between the two liqueurs is a grave and formal ceremony requiring the exercise of quasi judicial functions, which cannot be invoked amid the disturbing influences which usually surround the post-prandial consumption of Chartreuse.

The proof of actual deception is exceedingly unsatisfactory. The facts regarding the migration of the Monks to Tarragona and their adoption of entirely new labels is so well known that no one connected with the trade could be deceived. The consumer

might be, but the assertion that he has been depends more upon presumption than fact. 25

We are thus confronted with a situation which is *sui generis*, it differs on the facts from all reported cases and it is hardly possible that such a combination of abnormal circumstances can ever occur again.

What the defendant is doing is perfectly lawful in France. It has a right to make the liqueur, call it "Chartreuse" and sell it under the old labels. All this is not only permitted but it has the affirmative sanction of French law. 26

The complainants, so far as the United States is concerned, have a right to do what they are doing and whatever good-will pertaining to the old business remains in this country, should be conserved.

Lastly, the rights of the public are to be considered; they are entitled to protection from simulation and fraud.

In the recent case of Siegert v. Gandolfi, 149 Fed. 100, this court said upon somewhat similar facts:

"Undoubtedly the Siegerts did not, and could not acquire such a monopoly in a geographical name as a trademark or trade name as would entitle them to prevent others from using it under any circumstances. But it is sufficient to entitle them to relief that they used the name lawfully to designate their product until it became known to the trade by that designation, that by doing so they acquired a trade which was valuable to them, and that their business is being injured by acts of the defendants which create a dishonest competition by leading the public to believe that Abbott's Bitters are the original bitters." 27 28

Although, as before stated, there is inadequate proof of deception we cannot close our eyes to the fact that the use of the old labels alone might easily induce a purchaser, seeking the Monks' cordial, to take defendant's instead. The old labels indicate to one who had long dealt in the old cordial that it was made not only at the Grand Chartreuse but also that it was made by the Monks. The last representation is not expressed in so many words, but is a reasonable and fair impli-

29 cation from the long association of the label with the Monks' product.

A purchaser is compelled to rely upon external appearances and if he wanted the Monks' product he would be justified in thinking he had procured it if the bottle were identical in appearance with that which contained the liqueur of years ago when he first became acquainted with it.

The defendant is the successor of the liquidator who was appointed by the French Court and acted pursu-
30 ant to its decree, he should not be treated as an ordinary pirate seeking by fraud to divert a legitimate business.

The common sense solution of the problem, it seems to us, is to compel both parties to tell the truth about their goods. There is no false statement on either the complainants' or defendant's labels as now printed, but the use of the old labels and insignia are, to say the least, misleading. If the defendant desires to sell its liqueur on its merits there is no excuse for using
31 labels of the same size, shape and color as the old ones with the signature, L. Garnier, the stars, the orb and the cross.

On the other hand, the defendant having acquired the right to manufacture liqueur at the Grand Chartreuse, or at Fourvoirie within the demesne of the convent, should not be debarred from whatever advantage may flow therefrom. There can be no doubt that, based partly on fact and partly on the statements of the Monks, there is a general belief that the plants
32 which grow in the Alps in the vicinity of the convent possess peculiar qualities and have an aroma indigenous to that locality. To deprive defendant of the right to mention the locality of its distillery is to deprive it of a substantial right. This right was recognized in the English case—which on appeal went strongly against the defendant—the court saying in substance that the use of the word "Chartreuse" should be enjoined if used "without clearly distinguishing the liqueurs so sold from the liqueurs manufactured by the Plaintiffs".

We see no reason why the defendant should not be permitted, for instance, to use a label, printed in any language, in the following words : 33

LIQUEUR
Made by the
COMPAGNIE FERMIÈRE
de la
GRANDE CHARTREUSE
at Voiron
FRANCE.

34

or as follows :

35

LIQUEUR
made at
The
GRANDE CHARTREUSE
by the
COMPAGNIE FERMIÈRE
successor to
M. LECOUTURIER, LIQUIDATOR
of the property of
the
CARTHUSIAN MONKS.

36

37 The foregoing forms are suggested, tentatively, to illustrate the labels which, in our opinion, the defendant may legally use. We do not, however, intend to be understood as intimating that the defendant should be limited to such use.

So long as the purchaser is clearly made to understand that the liqueur is not the product of the Monks no injury is done to the complainants. If the old labels and symbols are abandoned we see no reason for compelling the defendant to change the shape
38 of its bottles.

Paragraph No. 4 of the decree should be amended as follows: After the word "thereof" in line 9 (as printed on page 1568) add the following: "unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants".

In line 20 strike out the words "bottle or" and in the same line substitute the word "symbol" for the word "package" and in line 21 after the words "simi-
39 lar to" insert the words, "those appearing on".

The decree as amended, is affirmed without costs to either party in this court.

WARD J. concurs in the result.

Circuit Judge

[ENDORSED: United States Circuit Court of Appeals. For the Second Circuit. A. L. Baglin *et al.*, Complainants-Appellees, vs. The Cusenier Company, Defendant-Appellant. Opinion. COXE, J. United States Circuit Court of Appeals, Second Circuit, filed
40 August 3, 1908, William Parkin, Clerk.]

United States Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

No. 230, October Term, 1907.

Argued April 13-14, 1908; Decided Aug. 3, 1908. 2

~~Pere~~ Alfredo ~~Luis~~ Baglin, et al., Complainants-Appellees, vs. The Cusenier Company, Defendant-Appellant.	Appeal from the Circuit Court of the United States for the Southern District of New York.

3

Before Coxe, Ward and Noyes, Circuit Judges.

Appeal from a decree of the Circuit Court, Southern District of New York.

Noyes, Circuit Judge (dissenting).

While my ultimate conclusions with respect to the decree are not in practical effect widely at variance from those of Judge Coxe, the course by which I reach them is so essentially different as to require its separate presentation. 4

An orderly examination of the questions in the case may proceed along these lines:

(1) The trade-mark "Chartreuse".

(2) The status and property rights of the Congregation of the Chartreux in France prior to 1901.

(3) The proceedings under the Association Act of 1901 and their effect upon the business and trade-marks of the Congregation in France,—including trade-mark rights,—

(4) The property rights of the Congregation in the United States.

(5) The use by the defendant of the Congregation's labels and symbols.

6

I.

For hundreds of years the establishment of the Peres Chartreux (Carthusian Fathers) was in the valley of the Chartreuse, in Dauphine, France. Whether the Order originally took its name from the valley or the valley from the Order is not entirely clear. But it is certain that when, some years prior to the French Revolution, the Monks began to distill a liqueur for
7 their own use the convent was known as "La Grande Chartreuse". The Order was expelled from France at the time of the Revolution but returned in the early part of the last century and some years afterwards began to sell the liqueur which they manufactured.

The liqueur was manufactured by the Monks at a place near the monastery according to a secret formula which has never been divulged. But while all the constituents are not known it is certain that plants growing in the vicinity of the monastery were used. In fact
8 the Monks always contended that the use of the plants grown in this region gave the liqueur much of its peculiar excellence.

The liqueur was favorably received by the public. The Monks composing the Congregation of the Chartreux built up and carried on an extensive business in its manufacture and sale. It was consumed all over the world.

It does not appear that any distinctive name was ever applied to this liqueur by the Monks. The labels upon the bottles, however, bore the description:

"Liqueur fabriquée a La Gde. Chartreuse". The public undoubtedly abbreviated this phrase to "Chartreuse"; by that name the liqueur became known and it was applied to it for so many years that it became its trade mark. 9

The trade mark "Chartreuse" thus had its origin in the name of the place where it was made—La Grande Chartreuse—and it continued to designate the place. It was also identified with that region by the belief, which, as we have seen, was fostered by the Monks,—that the liqueur owed many of its valuable qualities to the plants found there. 10

But the trade mark "Chartreuse" was more than a place name. It identified in the public mind a liqueur made by the Carthusian Monks—by the Congregation of the Chartreux. The trade mark in the one word "Chartreuse" designated both the manufacturer and the place of manufacture. Whether it came to stand for the one more than for the other is not important. It never, in my opinion, wholly lost its double signification. 11

And even if the name "Chartreuse" had acquired a secondary meaning as designating the manufacturers—the Congregation of the Chartreux—and not the place, it was none the less a trade mark belonging to such manufacturers and capable of transfer.

Thus we come to the year 1901 and have this situation: The Carthusian Monks—Congregation of the Chartreux—at La Grande Chartreuse were carrying on an extensive business in the manufacture and sale of the liqueur designated by the valuable trade mark "Chartreuse". 12

II.

Prior to the French Revolution the Order of Carthusian Monks composing the Congregation of the Chartreux undoubtedly owned their monastery and the adjacent territory. But at the time of the Revolution, in 1793, this Congregation with all other relig-

13 ious societies in France was suppressed and it never had any legal organization as a corporate body after that time. The Monks were also expelled from France at this time. They returned, however, in 1816 and occupied the domain of La Grande Chartreuse as before with the permission of the Government but without any legal title. They applied for authority to exist as a religious corporation which would have given them the right to hold property but this was denied.

14 The Congregation, therefore, after its return to France and until 1901 was that of an unauthorized religious association existing by the toleration of the Government. It had no legal authority to hold property, real or personal. And yet it did hold property and, as we have seen, built up an extensive manufacturing business with the acquiescence of the Government. Its legal situation, therefore, was that of a *de facto* religious corporation or society, with an appurtenant manufacturing business.

15 In 1901 the Associations Law—as it is designated—was passed. This law made no change in the legal status of the Congregation. It did not, strictly speaking, confiscate its property because the Congregation had no authority to hold property. It did, however, withdraw the toleration under which the Congregation had existed as a *de facto* society and provided for the appointment of liquidators to wind up its affairs.

This Act is said to be based upon the traditional law of France that a Frenchman shall not part with his

16 right to own property or to marry, with which the monastic vows of "poverty, chastity and obedience" are in conflict. Its obvious purpose and effect—whatever its basis—was to force the Carthusian Monks and other similar orders out of France. But it is not within our province to discuss the justice, wisdom or policy of the Law.

III.

After the passage of the Act of 1901 the Congregation of the Chartreux applied to the present government of France, as it had done to the government of the Restoration, for authorization to exist as a religious corporation. This authority was, however, denied and in March, 1903, M. Lecouturier was appointed under the provisions of the Act by a court of competent jurisdiction liquidator of "the properties of the so called Congregation of the Chartreux, both the properties situated and held at the main house of St. Pierre des Chartreuse, and also those held by the said Congregation in its different establishments."

At the time of this decree, however, the Congregation of the Chartreux disclaimed ownership, as an association or society, of the trade mark "Chartreuse", and the business connected with the manufacture of the Chartreuse liqueur, and claimed that they were the property of a former Procureur of the Order, Father Rey, who had been secularized for the purpose of holding them. The liquidator, however, instituted proceedings against Rey, as a result of which it was determined by the highest French Courts that he was merely an interposed person or passive trustee and that the property transferred to him, in fact belonged to the Congregation of the Chartreux and constituted part of the assets to which the liquidator was entitled.

The decree in this case which is of the utmost importance as affording the basis of the rights of the parties is as follows:

"Declares that the business of the manufacture of liqueurs, cordials and other products exploited at the Grande-Chartreuse and at Fourvoirie under the commercial names of "Liqueur manufactured at the Grande-Chartreuse", "Vegetable Elixir of the Grande-Chartreuse" and "Products of the Grande-Chartreuse" including the good will and clientelage, the ownership of the trade marks and commercial names used to designate such products

21 * * * and all other accessories and appurtenances generally whatsoever belonging to the aforesaid business which were the object of the deed of transfer * * * (to Rey) * * * is property held by the Order * * * and that such property forms part of the assets to be liquidated."

Attempts have been made to secure interpretations of this last decree upon the point whether it embraces foreign trade marks but the French courts have declined to interpret it and it must be taken as it stands.

22 The question then is this—what was the effect of these decrees upon the business and trade marks of the Congregation? It is contended, in behalf of the complainant, that when the Monks left France they took their business and the trade marks attached to it with them; that all the liquidator obtained was the tangible property which they left behind—"the bricks and mortar of the distillery."

This contention, although supported by high authority, seems to me not well founded. Had the

23 Monks moved their establishment out of France before the appointment of a liquidator it may be that he would have obtained nothing more than the tangible property which was left. It may be that a manufacturer can move his business from one country to another so that a receiver of his property will take nothing but the factory and the machinery remaining in it. I do not find it necessary to determine these questions. In this case the Monks did not attempt to take their business away with them. Before the de-

24 cree appointing the liquidator was entered they had transferred the business, good will and trade marks to Father Rey. With respect to the liquidator he held them merely as trustee for the Congregation but as between him and the Congregation the technical title at least passed. The Monks cannot be said to have taken away their business and its incidents after the conveyance to Father Rey. To what extent the title passed—how far Rey was accountable—need not be considered. It is sufficient to say that the Congregation by the conveyance to Rey placed the title to the

business, good will and trade marks in such situation that they could be appropriated by the liquidator. The liquidator attempted to appropriate them; Rey with the aid of the Monks contested the liquidator's demands, and the court, having jurisdiction, decided that they belonged to the liquidator.

I can reach no other conclusion than that the trade mark "Chartreuse" and the manufacturing business to which it was an incident, so far as France is concerned, passed to the liquidator and that, as said by Judge COXE, "such a bill as we are now considering would not stand for a moment in any court of France."

IV.

The examination of the case thus far necessarily brings us to the conclusion that unless the Congregation of the Chartreux had an independent business in this country to which the trade mark "Chartreuse" could be considered an incident the bill for infringement of trade mark cannot be sustained. If the trade mark, so far as the United States is concerned, passed with the transfer *in invitum* of the business in France the complainant cannot base any demands upon it.

Now there is this distinction which differentiates this country from other countries where the right of the Monks to protection in their trade marks has been recognized notwithstanding the proceedings in France, and that is the difference in trade mark registration laws. It may well be that where such laws confer property rights upon the owners of a trade mark similar to those conferred by our patent or copyright statutes that the French decree and the transfer of the French business would not affect the registered trade marks.

But our trade mark Act confers no such rights. It merely brings pre-existing property rights within the cognizance of federal courts in certain instances but in no sense confers such rights (Sarrazin v. W. R. Irby

29 Cigar & Tobacco Co., 93 Fed. 624, and cases there cited). The registry of the trade marks in this country in name of Grezier, Procureur, therefore, neither adds anything to, nor takes anything away from, the complainant's case.

What property rights then did the Carthusian Monks have in this country? What business had they here to which the trade marks were an incident? It is not contended that they had any tangible property here. It is not claimed that they manufactured any of the
30 liqueur here. The most that appears is that their manufactured product had been sold in this country for many years through the agency of the firm of Batjer & Co. of New York. But their methods of doing business are not shown. In view of the fact that the witness Batjer speaks of his "profits" and of *his* expenditures for advertising it would seem probable that his firm had the exclusive right of purchase of the Monks' products from their European representative rather than that they were agents upon a commission
31 basis,—in other words that the liqueur sold by Batjer & Co. belonged to that firm upon its arrival in this country. Be that as it may I find nothing in the record showing that the Monks had any such separate business in this country that a good will attached to it as distinct from the good will of the business in France. The manufacturing business was located in that country alone. The good will attached to it there, and I know of no principle upon which such good will can be divided and sub-divided. If the Carthusian
32 Monks have property rights in this country in the name "Chartreuse" unaffected by the French decrees then every American manufacturer shipping goods to foreign countries who goes into bankruptcy and whose business and trade marks are sold still retains property rights in such trade marks abroad and may prevent their purchaser from engaging in foreign trade.

It is my opinion that the business of the Congregation of the Chartreux was located in France; that the good will followed the business and that the trade mark "Chartreuse" followed as an incident to the

good will. I am convinced that had the Congregation 33
sold its business and used language much more limited in scope than appears in the French decrees the trade mark " Chartreuse " would have passed with it for all the world, and I see no difference between a voluntary conveyance and a transfer by operation of law—, especially a transfer in connection with a voluntary conveyance—that to Father Rey.

For these reasons, and with reluctance in view of the nature of the case and of the high authorities holding contrary views I am of the opinion that the 34
Carthusian Monks—Congregation of the Chartreux—are not entitled to relief based upon their ownership of the trade mark " Chartreuse."

This is as far as it is necessary to go in this part of the case. The complainants must recover by the strength of their own title and not by the weakness of the defendant. If the Carthusian Monks have lost their rights to the trade mark it is not material here whether the liquidator and his assignee—the Compagnie Fermiere de La Grande Chartreuse—are using 35
the trade mark properly or not. It would not help their case that the liquidator had acquired a trade mark which he could not lawfully use. It would not aid them if the Court should be of the opinion that a deception was being practiced upon the public by describing as " Chartreuse " a liquid obtained only through the use of the sense of taste and " groping in the dark ". If the public are being deceived the courts will never afford affirmative relief to the defendant and possibly public remedies against it might be avail- 36
able. But no wrongful use of the trade mark entitles the complainants to relief if they have lost all rights in it.

It is, I think, a theory wholly without foundation that there could have been no separation of the trade mark " Chartreuse " from the secret formula—that as the liquidator failed to acquire the formula he could not legally have acquired the trade mark. The formula was either indispensable or unnecessary for the preparation of the product to which the trade mark could

truthfully apply. In the one case it is manifest that the liquidator could in the absence of the formula manufacture the product and use the trade mark without deceiving the public. In the other he would simply have acquired property of which he could make no use until he obtained the formula. But he would have owned it none the less. It would no more have reverted to the complainants than would one of the trade marks of a proprietary medicine business revert to its vendors because its formula had been lost or mislaid, or because an employee possessing exclusive knowledge of the secret process refused to disclose it.

As already indicated, the absence of the formula relates rather to the weakness of the defendant's case than to the strength of the complainants'. It may well be that neither the complainants nor the defendant have now the right to use the trade mark "Chartruse"—the complainants, because it has been taken away from them by legal process; the defendant, because it cannot be used without deceiving the public. But the defendant's situation does not benefit the complainants here.

V.

But while, in my opinion, the trade mark "Chartreuse" passed to the liquidator and his assignee it does not follow that the symbols of the orb and the cross upon the labels likewise passed and gave such assignee the right to use them upon its products. Such symbols are of a religious nature, are distinctly personal to the Monks, and could not be taken from them. The fact that the liquidator seized certain labels and had others printed gave him no right to use the religious symbols of the Monks. And this is true in less degree of the stars, and of the signature of the officer of the Order "L. Garnier". Unlike the trade mark "Chartreuse" these symbols and name are personal to the Monks and they should be protected from their

misappropriation and use by the defendant. I cannot adopt the view that the Compagnie Fermiere de La Grande Chartreuse could acquire the right to use these symbols. 41

For these reasons I am of the opinion that the decree of the Circuit Court should be so modified as to restrain the defendant only from using the said symbols and the name "L. Garnier" and should not relate to use of the trade mark "Chartreuse". In reaching this conclusion, however, I am not unmindful of the fact that the opinion of the majority of the court in requiring each party to tell the truth not only does exact justice between them but protects the public from deception. The result is so equitable that were it not for my inability to appreciate the complainants' standing to obtain such a decree I should concur in it. 42

[ENDORSED: United States Circuit Court of Appeals, Second Circuit. Alfred Louis Baglin vs. Cusenier Company. Opinion (dissenting), NOYES, Circuit Judge. United States Circuit Court of Appeals, Second Circuit, filed Aug. 3, 1908, William Parkin, Clerk.] 43

44

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 21st day of August, one thousand nine hundred and eight.

Present:

HON. ALFRED C. COXE,
HON. HENRY G. WARD,
HON. WALTER C. NOYES,
Circuit Judges.

PERE ALFREDO LUIS BAGLIN ET AL.,
Complainants-Appellees,

vs.

CUSENIER COMPANY,
Defendant-Appellant.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is amended in accordance with the opinion of this Court, and as so amended is affirmed without costs to either party in this Court.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

[ENDORSED:] United States Circuit Court of Appeals, Second Circuit. P. A. L. Baglin vs. Cusenier Co. Order for mandate. United States Circuit Court of Appeals Second Circuit Filed Aug. 21, 1908. William Parkin, Clerk.

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1614 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Pere Alfredo Luis Baglin *et al.* against The Cusenier Company, as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 24th day of October, in the year of our Lord One Thousand Nine Hundred and Eight and of the Independence of the said United States the One Hundred and thirty-third.

(Signed) WM. PARKIN,
Clerk.

[SEAL.]

United States Circuit Court of Appeals for the Second Circuit.

No. 230, October Term, 1907.

PERE ALFREDO LUIS BAGLIN et al., Complainants-Appellees,
vs.
CUSENIER COMPANY, Defendant-Appellant.

Notice of Appeal.

William Parkin, Esq., Clerk United States Circuit Court of Appeals for the Second Circuit.

Messrs. Howson & Howson, Solicitors and of Counsel for Defendant-Appellant, 38 Park Row, New York City.

Sirs: Please take notice that the Complainants-Appellees, Pere Alfredo Luis Baglin et al., hereby appeal to the Supreme Court of the United States from the Order for Mandate of the Circuit Court of Appeals for the Second Circuit, dated August 21, 1908, and all proceedings had in accordance therewith.

Dated, New York City, October 16, 1908.

Respectfully,

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Of Counsel for Baglin et al.

Service of the foregoing Notice is hereby admitted this 22nd day of October, 1908.

HUBERT HOWSON,
Of Counsel for Cusenier Co.

Endorsed: In the Circuit Court of Appeals of the United States for the Second Circuit. Pere Alfredo Luis Baglin et al., Complainants-Appellees, vs. Cusenier Company, Defendant-Appellant. In Equity, Docket No. 230, October Term. Notice of Appeal. Philip Mauro, Counsel for Complainants Appellees, Tribune Building, 154 Nassau Street, New York City. United States Circuit Court of Appeals Second Circuit. Filed Oct. 22, 1908. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

No. 230, October Term, 1907.

PERE ALFREDO LUIS BAGLIN et al., Complainant-Appellees,
vs.
CUSENIER COMPANY, Defendant-Appellant.

Appeal.

The above-named Complainant-Appellees, Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order, conceiving them-

selves aggrieved by the Order for Mandate of the Circuit Court Appeals for the Second Circuit, made and entered herein on Aug 21, 1908, do hereby appeal from said Order for Mandate, and subsequent proceedings had in accordance therewith, for the reas specified in the Assignment of Errors herewith, and pray that t their appeal may be allowed, and that a Transcript of the Rec and papers upon which said Order for Mandate was made, and all the proceedings and exhibits in this cause, duly authentica may be sent to the Supreme Court of the United States.

Dated, New York City, October 16, 1908.

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Of Counsel for Baglin et al.

Security for costs having been given in the sum of $250.00, it

Ordered that the foregoing appeal be and the same hereby is lowed.

Dated, New York City, October 21, 1908.

E. HENRY LACOMBE,
Judge of the United States Circuit Court of Appeals for the Second Circuit.

Endorsed: In the Circuit Court of Appeals of the United Sta for the Second Circuit. Pere Alfredo Luis Baglin et al., Complai ants-Appellees, vs. Cusenier Company, Defendant-Appellant. Equity. Docket No. 230, October Term. Appeal. Philip Mau Counsel for Complainants-Appellees, Tribune Building, 154 Nas Street, New York City. Service of a copy of the within Appeal hereby admitted this 22nd day of October, 1908. Hubert Howe United States Circuit Court of Appeals Second Circuit. Filed O 22, 1908. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

No. 230, October Term, 1907.

PERE ALFREDO LUIS BAGLIN et al., Complainants-Appellees,
vs.
CUSENIER COMPANY, Defendant-Appellant.

Assignment of Errors.

And now comes the above-named Complainants-Appellees, Pe Alfredo Luis Baglin, Superior-General of the Order of Carthusi Monks, for himself and all of the other Members of said Order, their counsel, and having prayed an appeal to the Supreme Cou of the United States from the Order for Mandate of the Circuit Co of Appeals for the Second Circuit, entered in this cause on Aug 21, 1908, respectfully represent as ground of appeal and as an

nment of errors herein that the Circuit Court of Appeals for the ond Circuit erred in the following particulars, to wit:

. The Court erred in not affirming in all respects the decree of Court below.

. The Court erred in modifying the decree of the Court below granting to defendant permission to use the word "Chartreuse" any manner in connection with liqueur not made by complain-

s.

. The Court erred in modifying the decree of the Court below by mitting defendant to use for its liqueur bottles of the shape pre-usly used by complainants.

. The Court erred in not holding that under the laws of this ntry the word-symbol "Chartreuse" is a good and valid trade-rk and susceptible of exclusive appropriation; and in this coun- has been and still remains the exclusive property of complain-

s.

. The Court erred in not holding that the trade-mark consisting the word-symbol "Chartreuse" is personal to complainants and not al or geographical in its significance; and in not holding that mplainants have not been divested of their exclusive ownership reof in this country.

. The Court erred in not holding that the trade-mark consisting the word-symbol "Chartreuse" has always been and still remains roperty-right existing in this country, as an emblem of the good-ll existing in this country in the minds of the purchasing public this country, created by and identified with the exploitation in s country of the liqueurs made by the complainants; and in not lding that such good-will and property-right cannot be destroyed transferred by the act of a foreign country.

. The Court erred in not holding that the complainants have ntinued in Spain the same old business created by them in France; d in not holding that the defendant's consignors have established entirely new business, and are not complainants' successors in siness; and in not holding that no action by a foreign country can rest the complainants of their aforesaid property-rights existing this country, or sever from complainants' still-continuing busi-s the good-will and trade-mark heretofore identified therewith in s country.

. The Court erred in permitting the defendant to use either of two labels set out in the majority opinion of said Court, or any el similar thereto.

. The Court erred in not holding that the complainants have ndoned neither actually nor constructively their trade-mark con-ing of the word-symbol "Chartreuse," or any of their old trade-rks.

10. The Court erred in not holding that the complainants have d the word-symbol "Chartreuse" as a trade-mark, and have desig-ted their liqueur as "Chartreuse," by means of the letters blown o their original bottles, and otherwise.

11. The Court erred in holding as a question of fact that there is sufficient evidence that defendant's liqueur is different from com-inants'.

12. The Court erred in not holding as a question of law that greater the resemblance between the two liqueurs, the greater the portunity for deception and the greater the injury to complainan

13. The Court erred in holding that specific proof of actual dec tion is necessary.

14. The Court erred in not holding that there is in the rec sufficient proof of actual deception of the public by reason of fendant's imitation, and that the public have bought defendan article from dealers under the supposition that it was complainan genuine product.

15. The Court erred in holding that knowledge by a few or many persons of all of the facts relating to the migration of complainants to Spain, could justify the use by defendant of word-symbol "Chartreuse" in connection with liqueurs not ma factured by complainants.

16. The Court erred in not holding that, even should the defe ant be permitted employ the word-symbol "Chartreuse" in any m ner in connection with liqueurs not manufactured by complainan such use should be in connection with the explicit statement t such liqueur is "not manufactured by the Carthusian Monks."

Wherefore, and for divers other errors in the record of this ca appearing, the Complainants-Appellees pray that the aforesaid O for Mandate of the Circuit Court of Appeals for the Second Circ and all subsequent proceedings had in accordance therewith, m be reversed, and that the said Circuit Court of Appeals for Second Circuit may be directed to enter an Order for Mandate s taining in all respects the Decree of the Circuit Court for the So ern District of New York, in the Second Circuit, entered herein November 26, 1907.

Dated, New York City, October 16, 1908.

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Of Counsel for Baglin et al.

Endorsed: In the Circuit Court of Appeals of the United St for the Second Circuit. Pere Alfredo Luis Baglin et al., Compla ants-Appellees vs. Cusenier Company, Defendant-Appellant. Equity, Docket No. 230, October Term. Assignment of Err Philip Mauro, Counsel for Complainants-Appellees, Tribune Bui ing, 154 Nassau Street, New York City. Service of a copy of t within ass't of errors is hereby admitted this 22nd day of Octo 1908. Hubert Howson. United States Circuit Court of Appe Second Circuit. Filed Oct. 22, 1908. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

PERE ALFREDO LUIS BAGLIN et al., Complainants,
against
CUSENIER COMPANY, Defendant.

Security for Costs in the Supreme Court of the United States.

Know all men by these presents, that the Federal Union Surety mpany, a corporation organized under the laws of the State of iana and having its principal office in the City of Indianapolis, iana, and lawfully transacting business in the State of New York, l having its principal office in said State at # 35 Nassau Street, the Borough of Manhattan, City of New York, is held and firmly nd unto the above-named Cusenier Company, in the sum of Two ndred and fifty ($250.00) Dollars, to be paid to the said Cusenier mpany, for the payment of which, well and truly to be made, it ds itself, its successors and assigns, firmly by these presents.
Sealed with its seal and dated the Twentieth day of October, 1908.
Whereas, the above named Pere Alfredo Luis Baglin, et al., have secuted an appeal to the Supreme Court of the United States to erse an order for mandate rendered in the above entitled suit, by e United States Circuit Court of Appeals, for the Second Circuit.
Now, therefore, the condition of this obligation is such, that if the ve named Pere Alfredo Luis Baglin, et al., shall prosecute their peal to effect, and answer all costs in the Supreme Court of the ited States, if they fail to make said appeal good, then this obliga- n shall be void, otherwise the same shall be and remain in full rce and virtue.

FEDERAL UNION SURETY COMPANY,
By ROBERT M. NUGENT,
Res. Vice-President.

Attest:
E. B. HOXIE,
Res. Ass't Secretary.

[L. S.]

Form 400—1-06.

Affidavit, Acknowledgment and Justification by Federal Union Surety Company.

TATE OF NEW YORK,
County of New York, ss:

On this 20th day of October, one thousand nine hundred and ght, before me personally came Robert M. Nugent, known to me be the Res. Vice-President of the Federal Union Surety Com- ny, the corporation described in and which executed the annexed nd of Pere Alfredo Luis Baglin, as surety thereon, and who, being

by me duly sworn, deposes and says that he resides in the City New York, State of New York; that he is the Res. Vice-President said Federal Union Surety Company, and knows the corporate thereof; that said Federal Union Surety Company is duly and leg incorporated under the laws of the State of Indiana; that said C pany has complied with the provisions of the Act of Congress August 13, 1894, allowing certain corporations to be accepted surety on bonds; that the seal affixed to the annexed bond (Fo —) of Pere Alfredo Luis Baglin is the corporate seal of said Fede Union Surety Company, and was thereto affixed by order and thority of the board of directors of said Company; and that he sig his name thereto by like order and authority as Res. Vice-Presid of said Company; and that he is acquainted with E. B. Hoxie knows him to be the Res. Ass't Secretary of said Company; and the signature of said E. B. Hoxie subscribed to said bond is in genuine handwriting of said E. B. Hoxie, and was thereto subscri by order and authority of said board of directors, and in the pres of said deponent; and that the assets of said Company, unincu bered and liable to execution, exceed its claims, debts, and liabiliti of every nature whatsoever, by more than the sum of Three Hu dred Thousand Dollars.

ROBERT M. NUGENT

Sworn to, acknowledged before me, and subscribed in my presen this 20th day of October, 1908.

[L. S.] GERTRUDE M. MACDONALD,
Notary Public, New York County.

Cert. filed in Kings, Queens, Suffolk, Richmond & Westches Counties.

Endorsed: P. A. L. Baglin vs. Cusenier Co. Bond. Approved to form and also as to sufficiency of sureties, with reservation, ho ever of the right at any time to examine the proper officers of t Surety Company, under oath, touching its assets, liabilities a financial condition generally. (Sgd.) E. H. Lacombe, U. S. Circ Judge. United States Circuit Court of Appeals, Second Circu Filed Oct. 22, 1908. William Parkin, Clerk.

By the Honorable E. Henry Lacombe, one of the Judges of t United States Circuit Court of Appeals for the Second Circuit.

To the Cusenier Company, a New York corporation, Greeting:

You are hereby cited and admonished to be and appear before t Supreme Court of the United States, to be holden in the City Washington, in the District of Columbia, on the 20th day of Nove ber, 1908, pursuant to an appeal filed in the Office of the Clerk the United States Circuit Court of Appeals, for the Second Circu wherein Pere Alfredo Luis Baglin, Superior-General of the Order Carthusian Monks, for himself and all of the other Members of s Order, (Complainants-Appellees in this Court), are Appellants, a

Cusenier Company (Defendant-Appellant in this Court), are pellee, to show cause, if any there be, why the Order for Mandate the United States Circuit Court of Appeals for the Second Circuit, all subsequent proceedings had in accordance therewith, in said eal mentioned, should not be corrected and speedy justice should be done in that behalf.

Given under my hand in the City of New York, in the Southern trict of New York, and Circuit above named, this 21st day of ober, in the year of our Lord one thousand nine hundred and ht and of the Independence of the United States the one hundred thirty-third.

E. HENRY LACOMBE,
Judge of the United States Circuit Court of Appeals for the Second Circuit.

[Endorsed:] In the Circuit Court of Appeals of the United States the Second Circuit. Pere Alfredo Luis Baglin et al., Complain-s-Appellees, vs. Cusenier Company, Defendant-Appellant. In uity, Docket No. 230, October Term. On — Patent No. —. ation. Philip Mauro, Counsel for Complainants-Appellees. bune Building, 154 Nassau Street, New York City. To —— —, Esq., ——. Service of a copy of the within citation is hereby nitted this 22nd day of October, 1908. Hubert Howson. United tes Circuit Court of Appeals, Second Circuit. Filed Oct. 22, 8. William Parkin, clerk.

Supreme Court of the United States.

No. 614, October Term, 1908.

PERE ALFREDO LUIS BAGLIN, Superior General, etc., Appellant,
vs.
CUSENIER COMPANY.

On consideration of the petitions for writ and cross-writ of ciorari herein to the United States Circuit Court of Appeals of Second Circuit, and of the argument of counsel thereupon had, it is now here ordered by the Court that said petitions be, and the e are hereby, granted, the transcript of record filed on the appeal stand as a return to said writs.
April 19, 1909.

[Endorsed:] File No. 21410. Supreme Court of the United tes. October Term, 1908. Term No. 614. Order. Filed Apr. 1909.

Endorsed on cover: File No. 21,410. U. S. Circuit Court of Ap-ls, 2d Circuit. Term No. 291. Pere Alfredo Luis Baglin, erior-General of the Order of Carthusian Monks, for himself all of the other members of said order, appellant, vs. Cusenier mpany. Filed November 14th, 1908. File No. 21,410.

JAMES H. McKENNEY

IN THE

Supreme Court of the United States

October Term—1910

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order

Complainants, Appellants and Petitioners

vs.

CUSENIER COMPANY

Respondents and Cross Petitioners

No. 86

Brief for Respondents and Cross Petitioners

A. L. PINCOFFS
ROGER FOSTER
Counsel for Respondents
and Cross Petitioners

Telephone 920 Cort The Wetherbee Print 38 Beekman N. Y.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all the other Members of said Order,

Complainants, Appellants and Petitioners,

vs.

CUSENIER COMPANY,

Respondents and Cross Petitioners.

This case comes before this Court on the return of a writ and cross writ of certiorari which were granted on April 19th, 1909. These proceedings bring up for review the decree made by the Circuit Court of Appeals for the Second Circuit on August 21st, 1908, which amended, and as amended affirmed a decree of the Circuit Court for the Southern District of New York entered November 26th, 1907.

The ordering part of the decree of the Circuit Court is as follows:

> "It is further ADJUDGED, ORDERED and DECREED that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen and each of them be, and they hereby are *perpetually enjoined* from using in

> this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the trademark 'Chartreuse' or of any colorable imitation thereof—or the fac-simile signature of L. Garnier, or any colorable imitation thereof—or any of the trademarks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or indirectly, within this country any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any bottle or label or package like or substantially similar to 'Complainants' Exhibit Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

The Circuit Court of Appeals amended the decree in such paragraph by adding after the word "thereof" in the ninth line of said paragraph, as printed on page 1568 of the Record, the words "unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants," and striking out in line 20 the words "bottle or" and in the same line substituting the words "symbol" for the word "package," and in line 21 by inserting after the words "similar to" the words "those appearing on."

The decree as amended by the Circuit Court, therefore, enjoins the defendant

> "from using in this country or in any posses-
> "sion thereof, in connection with any liqueur

"or cordial not manufactured by complain-
"ants, the trade mark 'Chartreuse' or of any
"colorable imitation thereof unless so used
"as clearly to distinguish such liqueur or
"cordial from the liqueur or cordial man-
"ufactured by the complainants, or the fac-
"simile signature of L. Garnier, or any col-
"orable imitation thereof, or any of the trade-
"marks above referred to, or any colorable
"imitation thereof; and they and each of them
"are likewise perpetually enjoined from im-
"porting or putting out or selling or offering
"for sale, directly or indirectly, within this
"country any liqueur or cordial not man-
"ufactured by complainants in any dress
"or package like or simulating in any mat-
"erial respects the dress or package here-
"tofore used by complainants' and in par-
"ticular from making use of any label or
"symbol like or substantially similar to those
"appearing on Complainants' Exhibit Defend-
"ant's Liqueur, being the bottle now on file
"as an exhibit in this Court, and from in any
"wise attempting to make use of the good-
"will and reputation of complainants in put-
"ting out in this country any liqueur or cor-
"dial not made by complainants."

On November 14th, 1908, the complainants appealed from this decree. A motion to dismiss the appeal was made by the respondents on the 27th day of February, 1909. The complainants in their answer requested the Court to deny the motion and made various cross motions, and called the attention of the Court to their petition for certiorari which they presented at the same time, "in case your Honors think all our requests should be denied."

In their petition for certiorari they referred to the appeal which they had taken and "being uncertain whether they are entitled to an appeal as matter of right," they pray that the transcript of the record filed under the appeal be accepted as

a return to the certiorari. A motion for a cross writ of certiorari was made by the complainants.

On the 19th day of April, 1909, the Court granted the writ of certiorari and in its decision was silent as to the motion to dismiss. The effect of the granting of the writ of certiorari was by implication to dismiss the appeal. The learned counsel for the appellant himself asked that the writ should be granted only in case the Court was of opinion that the motion to dismiss the appeal should be granted and the requests of complainant denied. The two reliefs are absolutely inconsistent. Under the Evarts Act, no certiorari can be allowed in a case where there exists a right to appeal, the effect of the grant of the writ must consequently have been to dismiss the appeal. Any other ruling would be a hardship to the respondents, who would have taken a cross appeal, had they understood that the Court considered the interlocutory decree to be appealable.

For analogous cases holding that where two motions are made for inconsistent relief and the Court, in its order or decision, grants one but is silent as regards the other; this is in effect a denial of such other motion. See *Conrad vs. Insurance Co.*, 81½ Pa. St., 66; *Nalle vs. Young*, 160 U. S., 624, 642; *Hoyle vs. Farquharson*, 80 Mo., 377; *Vance vs. McNabb, etc., Co.*, Tenn Ch., Appeal, Sept. 11, 1897, 48 S. W., 235.

The foundation of the motion was that the decree, which is for an injunction and an accounting, was not final, but purely interlocutory. *Brown vs. Swann*, 9 Peters, 1, 23; *Beebe vs. Russell*, 19 How., 283; *Keystone Manganese & Iron Co. vs. Martin*, 132 U. S., 91, 92, 93; *McGourkey vs. Toledo & Ohio Central R. Co.*,

146 U. S., 536, 545, 549; *Latta vs. Kilbourn,* 150 U. S., 524, 537, 538, 540; *California Nat. Bank vs. Stateler,* 171 U. S., 447, 449.

After these writs of certiorari had been granted, a motion was made in the Circuit Court on August 13, 1909, to punish the defendants for contempt for an alleged violation of the injunction as modified. This motion was granted below; but, upon an appeal by the defendants, the order fining them was reversed by the Circuit Court of Appeals. An application was then made to this Court for an additional writ of certiorari to review the latter order of the Circuit Court of Appeals and decision thereupon was reserved.

This cause involves the right to the use in this country of the geographical term "Chartreuse", when applied to a cordial manufactured at the "Grande Chartreuse" from herbs which grow in that domain; and also to the use here of certain old and well known trade marks and labels, which the complainants have abandoned after their purchase by the defendants' vendor at a judicial sale in France, the country where this domain is situated.

The Bill of Complaint, filed in January, 1905 (p. 1, et seq., Rec.), alleges in substance, that "for four hundred years" complainant and his associates, and their predecessors in the Order of Carthusian Monks of the Convent "La Grande Chartreuse", near Voiron, France, there carried on the manufacture of a certain cordial or liqueur known as "Chartreuse." It also alleges that said order is generally known as "Pères Chartreux" (Chartreuse Fathers). We note here that not one witness has testified that they were ever known in the English language by any other name than "Carthusian" Fathers, by which name they are

designated by complainant's American witnesses (XQ 16, fol. 2603, p. 652 Record).

It further alleges that the manufacture was, and is, carried on by the Monks exclusively in accordance with an alleged secret recipe or formula; but says in paragraps 3 (p. 3), that *since the year 1904* complainant and his associates *have not carried on the manufacture at the said Convent la Grande Chartreuse, but at Tarragona, Spain,* to which place complainant and his associates removed "in consequence of the enforcement by the French Government of an enactment known as the 'Associations' Act of 1901."

The Bill further alleges long continued use of the word "Chartreuse" as a trade-mark to designate the said cordial or liqueur; the packing of the liqueur in bottles of peculiar design bearing the mark "Chartreuse" together with other distinctive marks and symbols, such as a *fac simile* of the signature of L. Garnier; registration of the mark in the United States Patent Office in 1871, and again in 1884, in the name of Frère Grezier, said to have been formerly Procureur of the Order.

Finally, the Bill charges (Par. 6, 7) that *since the removal of the Order from France,* certain persons in said country have, without complainant's consent, commenced the manufacture of the cordial in imitation of that manufactured by complainant, and his associates and their predecessors, and are making it under the name of Chartreuse, in bottles and cases similar in appearance, and bearing labels similar to those long used "by your orator and his associates," and placing thereon the trade-mark "Chartreuse," "falsely representing that it is made in accordance with the famous recipe long owned (and still owned exclusively) by your orator."

Defendant, a corporation with its principal place of business in New York, is charged with having imported into, and sold and offered for sale in, this country, quantities of this so-called "spurious" Chartreuse bearing said marks and labels.

Injunction is prayed restraining defendant (a) from infringing the said trade-marks, or either of them; (b) from imitating the labels or distinctive marking and features of the genuine Chartreuse of complainant and his associates; (c) from making use of the name "Chartreuse" or any imitation thereof "in connection with" liqueurs or cordials, and (d) from in any wise representing that any liqueur not manufactured by plaintiff, and his associates, is the genuine Chartreuse or made in accordance with the secret process of the Carthusian Monks.

The Answer (p. 833 *et seq.*) denies, or puts complainant to his proof of, all the material allegations of the Bill on the question of title, denies infringement (Par. 7), and alleges (Par. 8) *abandonment* in or about the year 1903 by complainant and his associates of the business of making and selling the liqueur properly known as Chartreuse, and of the alleged trade-marks and other *indicia* to which the Bill refers.

Paragraph 9 of the Answer (p. 839 *et seq.*) sets forth the further and main defense: that the Order of Carthusian Monks, having been refused authorization under the French law of July 1, 1901, known as the "Associations Act," was, on or about March 31, 1903, by decree of a French Court having jurisdiction, judicially dissolved and a receiver or liquidator appointed, in whom was vested all the property of said Order, including the liqueur manufacturing business of "La Grande Chartreuse," and the distillery fixtures, trade-marks and

good will of said business, which the Monks were directed to turn over to him; that said liquidator was duly authorized to carry on the said business, and use the fixtures, good will and trade-marks thereto pertaining; that the liquidator entered into possession, and continued the business of manufacturing and selling Chartreuse liqueur under the old trade-marks and labels, and that the Chartreuse liqueur sold and offered for sale by defendant in this country was so manufactured by the official liquidator or receiver, whose agent in this country defendant was at the time of Answer filed.

It will be observed that the controversy is not an ordinary "trade-mark" or "unfair competition" case, but is a question of "title" between parties, each claiming a right to use the disputed marks, to the exclusion of the other.

It will be observed also that the disputed marks (of which a reproduction is on the opposite page) make no reference to any person or persons as makers of the liqueur, but simply state that the "liqueur" is made at the Grande Chartreuse (fabriquée à la Grande Chartreuse) and that the alleged trade-mark Chartreuse occurs only as part of the place name, "La Grande Chartreuse." The only *personal* feature in the marks is what purports to be a copy of the signature of one L. Garnier, who is said in the evidence to have been at one time Procureur of the Order, but who is not so described on the label. The mark ground into the glass as shown on the upper part of the picture, above the yellow label, is also indicative of place, and not of person.


Gde CHARTREUSE
LIQUEUR
A LA Gde
FABRIQUÉE
CHARTREUSE
L. Garnier
L. Garnier

Proceedings and Occurrences Pendente Lite.

Upon the filing of the Bill, the Circuit Court (through Lacombe, *J.*), with a memorandum opinion filed January 11, 1905, ordered a preliminary injunction enjoining defendant from "selling, or offering for sale, any cordial not made by the Carthusian Monks, in packages which, by the collocation of emblems and inscriptions found upon the packages or upon the bottles, are similar to the well-known packages or bottles in which the complainant's association have heretofore offered their cordial for sale in this country," etc.

On appeal to the Circuit Court of Appeals order was reversed, in an opinion rendered by Coxe, J., for the majority of the Court on that appeal (141 Fed. Rep., 497), which held that the case disclosed by the record the Court was altogether too doubtful to justify the injunction granted below.

The Court said, after stating what it understood to be the agreed facts of the case:

> "Nothing further is needed to demonstrate the novelty and importance of the issues, and the difficulty in deciding them, upon a record so incomplete and unsatisfactory. Indeed, we hesitate to express an opinion upon the law, as the cause may be brought here again upon a complete record, presenting the question in a wholly different aspect. The injunction is broad and unconditional; it enjoins the defendant, *who is the agent here of the receiver appointed by the French Court, from using the bottles, labels and trade marks which his principal is using under the protection of the law in France* * * * * *In this connection it should be remembered that the complainant is not now*

using these bottles, labels and trade-marks, and his right to use them has been denied." (Italics ours.)

The opinion at the same time suggested:

> "It would seem that pending final hearing all confusion might be avoided if the defendant should attach to its bottles labels similar to those adopted by the complainant, stating 'this liqueur is made at La Grande Chartreuse, in France, under the direction of Mons. Lecouturier, appointed liquidator of the property of the Congregation of Carthusian Monks, after its dissolution and expulsion from France.'"

Thereupon, the preliminary injunction originally granted was vacated and a new injunction substituted restraining defendant from the use of the disputed trade-marks and labels, unless accompanied by a sub-label stating that:

> "This liqueur, although made at the Grande Chartreuse, in France, is not made by the Carthusian Monks, but under the direction of Mr. Lecouturier, appointed liquidator of their property after their expulsion from France."

Pending this litigation, and in the year 1906, the Chartreuse business and trade-marks were purchased from the liquidator, Mr. Lecouturier, by the *Compagnie Fermière de la Grande Chartreuse*, which Company has since been and is now carrying on the business (p. 1292), and the Circuit Court (Lacombe, *J.*) before the final hearing in the Circuit Court, allowed a modification of defendant's sub-label by the substitution of said Company's name for that of the receiver.

On the 11th day of November, 1907, after final hearing decree was entered enjoining the defendant as therein stated, which decree will be found

on page 1566 of the record. On appeal this decree, as before stated, was modified, and as modified, affirmed by the Circuit Court of Appeals.

Facts.

The date of the establishment of the Order in the valley of Chartreuse was 1084, and they remained there until 1793, when they were expelled from the property occupied by them; the state then took possession (p. 1231 *et seq.*). In 1816 they returned to France, but in the interval the domain remained known as "La Grande Chartreuse" although it was not occupied by the Monks (p. 1371). On their return they rented the domain from the Government and applied to it for authorization to exist as a religious corporation. This was refused and, at the time that the Associations Law of the 1st of July, 1901 was passed, the complainants were not a body corporate, and not being authorized could not be proprietors. They were tolerated by the Government, but such tolerance had nothing legal in it. These facts are testified to by complainants' witness, Andre Weiss (p. 542):

> "XQ52. What was the legal situation of religious associations before the law of 1901? A. Before the law of the 1st of July, 1901, religious associations enjoyed *de facto* a tolerance which I hasten to say had nothing legal in it.
>
> "XQ53. Before the law of July 1st, 1901, had religious associations the right to be proprietors? A. Authorized associations could be proprietors, *those that were not authorized could not in the legal sense of the word.*"

The statement therefore in the opinion in the case of the *Carthusian Monks vs. Bauer* (120 Fed.

Rep. ,78), that the corporation was incorporated about fifty years ago is erroneous.

Shortly before the French Revolution the Order of the Carthusians had begun distilling a certain elixir, but had used it only for their own consumption. Not until about fifty years ago (p. 179, fol. 716, Record) did they begin to sell the liqueur. The statement, in the Bill of Complaint, that such sale and manufacture took place for more than three hundred years, was characterized by Father Baglin as a gross inaccuracy (p. 252, fol. 1007).

When the volume of sale increased the trade-marks were registered in the name of the person who at the time was the Prior of the Order, and they were assigned by him to his successor. The Courts, in the various actions which were brought by these persons to maintain their right to trade-marks, held that the point raised by the defendants in these actions that the plaintiffs were merely the figureheads of the congregation, was not available to them.

But after the passage of the Association Law, when this question came up between the Receiver, Lecouturier, and the person holding this apparent title, it was held that for the purposes of such act the beneficial ownership was not in such passive trustees but in the congregation. (See decision of the Court of Appeals of Grenoble of the 19th of July, 1905, p. 1324, and particularly p. 1337, Record).

After the passage of the Law of 1901, the Carthusian Fathers made a petition, according to the provisions of the law, asking that the necessary authorization be given to them, and filed with such petition, as required by law, a statement of their assets. No mention whatever was made in this

petition or statement of the business or trade-marks connected with their manufacture of liqueur. The committee to which was referred advised against the granting of the authorization on the ground that the company had omitted to make any mention of what was generally known to be its principal source of income and evidently attempted to obtain such authorization by false pretenses and misrepresentations of its condition. (See pp. 236-237, fols. 942 and 948.) In answer to this the Order, by Father Baglin, expressly stated that the mark did not belong to them (p. 234, fol. 935). They claimed that the person in whose name the trade-mark stood was not a passive trustee, but the absolute owner; that

> "the mark of the liqueur called Chartreuse is not, whatever the imitators may say, the property of the congregation of the Carthusians, but really an individual and private property" (fol. 937).
>
> See also p. 242, fol. 968.

Father Baglin, when asked to explain the contradictions between these statements and his positive statement that the congregation was the owner at all times of the marks, says that he made the declarations, which were contrary to his convictions (fol. 964), much against his inclination and on advice of his lawyers (fol. 964), and in answer to the remark that the so-called fiction was not created by the State but by their own acts, he says (fol. 951): "We did what our counsel told us to do." The answer which Mr. Kelly gave to this was well deserved: "It is possible that, from your moral idea, is sufficient, but before the American courts it is not the same."

We call particular attention to this mass of contradictions, not only because it is important to the

issues in the matter, but as throwing light on the quality of the testimony of Father Baglin, who is the sole witness produced by the complainant in support of the most important part of the case, viz.: the existence of the so-called secret or mode of manufacture.

The French Associations Law of 1901 did not make any change in the legal position of religious corporations. Before its passage all associations, in order to have a legal existence, required the authorization of the Government. This law allowed the organization of law associations without such a prerequisite and left the position of religious congregations exactly as it was. The Government withdrew the "tolerance which had nothing legal" and enforced the existing law (see testimony of Alexander Millerand, p. 1186).

The consequences of a refusal of authorization are clearly expressed by this eminent statesman (p. 1191, fol. 1077):

> "Consequently, what the legislator wished was in the first place to apply to the members of congregations the common law, and afterwards apply common law to the property unduly described as such, of the congregations. He appointed, he intrusted the Tribunals with the appointing of, liquidators whose whole duty consists in dividing, according to the regulations of Section 18, amongst those entitled thereto, all the property which unduly belonged, through persons interposed, to unauthorized congregations, which, I repeat, by their very essence, cannot be owners."

The question as to whom ultimately any balance will go, will be decided, not according to any law of exception, but according to the principles of the Civil Code and Common Law (p. 1224, Record).

The text of the Law of Associations will be found printed in French and English, p. 1487. The policy of this law is reviewed by M. Emile Combes, late Prime Minister of France, in an article published in The National Review for March, 1905 (pp. 31-47, and republished in Littell's Living Age for April 1, 1905, pp. 1-13), and it is there shown that in the opinion of the French Government the suppression of the Monastic Orders in France had become a measure of national defense.

We understand that there is *no controversy as to the following facts*:

1. The Order of Carthusian Monks Convent de la Grande Chartreuse was refused authorization under the French law of July 1, 1901, known as the Associations Act, and in March, 1903, was by a Court of competent jurisdiction judicially declared dissolved, and a liquidating receiver appointed of all the property of the Order, including the business of manufacturing the liqueur, theretofore conducted at "La grande Chartreuse," and the distillery, fixtures, the good-will and the trade-marks pertaining to said business, the Receiver being duly authorized also to carry on the business and to use the distillery, fixtures, goodwill and trade-marks which the Monks were directed to turn over to him. Thereupon the liquidator entered into possession, carried on the business, and in connection with the protection thereof used the old trade-marks and labels here in dispute. For the record as to this, see:

(*a*) Defendant's Exhibit **Judgment of March 31, 1903,** of the Court of First Instance, of Grenoble, France (pp. 1502-1504), declaring the Order dissolved and appointing H. Le-

couturier (Official Liquidator) suquestrating administrator of the properties of the Order. No appeal from that judgment appears to have been taken.

(*b*) Defendant's Exhibit **Judgment April 23, 1904** (p. 1506 *et seq.*), being a Decree of the same Court in a proceeding between the Liquidator and one C. M. Rey, ex-Procureur of the Dissolved Congregation of the Chartreux, deciding against the latter's claim to be the real owner of the Chartreuse business and trade-marks, and adjudging (p. 1549, fol. 2109) that said business, "including the good-will and clientage, the ownership of trade-marks, commercial names, ehe exclusive right to the industrial and commercial name L. Garnier, the furniture, machinery and tools * * * * or other accessories and appurtenances belonging to the aforesaid business were in reality the property of the dissolved Order and that the aforesaid business, with all its accessories, including trade-marks, forms part of the assets to be liquidated."

(*c*) Order of the same Court (p. 1551 *et seq.*), authorizing the liquidator (p. 1557, fol. 2133) to take actual possession of the distillery at Fourvoirie, the business carried on there and all its appurtenances, and requiring Abbé Rey to hand over to the Liquidator or his representative the keys of the factory, together with all the books, documents and papers relating to the business, *and all the trade-marks belonging thereto.*

(*d*) Defendant's **Exhibit No. 12** (p. 1324 *et seq.,*) the **judgment of the Court of Appeals of Grenoble**, dated July 19, 1905, reciting (p. 1326 *et seq.*) the proceedings in, and the judgment of April 23, 1904, of the Court below, and (p. 1344, fol. 1527) affirming said judgment.



Les

Pères Chartreux

dépossédes
pour la France de
leurs anciennes marques
vendues aux enchères

ont emporté leur secret

et fabriquent a **TARRAGONE**

Exiger cette nouvelle bouteille en demandant la

"LIQUEUR DES PERES CHARTREUX"
(TARRAGONE)
ou simplement

"Une Tarragone"

(*e*) Defendant's **Exhibit No. 21** (p. 1349 *et seq.*). Decision by **Court of Cassation,** of July 31, 1906, dismissing Rey's Appeal from the last mentioned decision of the Court of Appeals of Grenoble. (Lecouturier, pp. 1227, 1228; Millerand, p. 1178.)

There has been thus a material change of situation since the preliminary injunction proceedings in this cause. Since then the French Judgment, under which defendant claims, has become not merely the judgment of a Court of first instance, an appeal from which was pending, but the final judgment of the French Court of last resort. In this connection, too, note should be taken of the fact stated in the decision of Court of Cassation, that in that Court the claimant, Rey, formally *withdrew* the exception which he had taken to the judgment of July 19, 1905, of the Grenoble Court of Appeals, to the effect that said judgment involved a wrong application of Articles 17 and 18 of the Associations Law of July 1, 1901 (p. 1409).

2. Still another change of situation is that since the preliminary injunction proceedings, and in July, 1906, the Official Liquidator, in the exercise of his authority, sold the business, good-will and the disputed marks to a company known as *Compagnie Fermière de la Grande Chartreuse*, which is now carrying the business on under the old marks (Aubry, Qs. 7-8, p. 1292; Defendant's Exhibit "Defts. proposed Circular," p. 1413). This situation has been publicly recognized and acquiesced in (so far as France is concerned) by complainants themselves, who since that time have been extensively publishing in French journals the advertisement, copy of which from the *La Vie au Grand Air* of April 20, 1907, is in evidence (p. 1295). In this advertisement, shown on the op-

posite page, complainants use language of which the following is a translation:

> "The Pères Chartreux *dispossessed in France* of their FORMER trade-marks, *sold at auction*, have carried away their secret and manufacture at Tarragone.
>
> Insist upon this new label when asking for the
>
> 'Liqueur Pères Chartreux'
> (Tarragone)
> or simply
> 'A Tarragone.'"

In addition to this, we have the following admission from Complainant Baglin himself, in his deposition for complainant (p. 212):

> "XQ292. Have you not abandoned the mark which you produce to-day, and which is the object of these proceedings, in 1903? A. We *abandoned it in France, yes*, as we can no longer produce in France; but not abroad.
>
> "XQ293. Then why are you unable to make use of this mark in France? A. Because the Liquidator has possessed himself of same."

This testimony was given before the sale by the Liquidator to the "Compagnie Fermière de la Grande Chartreuse."

3. Immediately after the dissolution of the Order and the transfer of the business and good-will to the Liquidator, the Monks left the Convent in la Grande Chartreuse and the Distillery Fourvoirie, France, and at no time since April 22, 1903, have they manufactured liqueur at la Grande Chartreuse or anywhere in France. This abundantly appears from the Baglin deposition (p. 170 *et seq.*,) and other proofs in the case.

4. After leaving France, and as would appear from the proofs, some time in 1904 (p. 704), the

DEFENDANT'S EXHIBIT.

Complainant's New Label.



This Liqueur is the only one identically the same as that made at the Monastery of the Grande-Chartreuse in France, previous to the expulsion of the Monks, who have kept intact the secret of its manufacture. It is now made by the same Monks in Spain, whence it is shipped direct to the United States through **Messrs. BATJER & Cie**, New-York, Sole Agents for the sale of the products of the Pères Chartreux in United States.

CAUTION. — None is guaranteed genuine in the United States, unless bearing the above label of which this notice forms part.

Monks entered into a contract with a concern styled "Union Agricola," for the manufacture and exploitation of a liqueur at Tarragona, Spain, and incidentally, it appears (pp. 250-251) this contract was made during the very period when the Monks were resisting the Liquidator's claim to the business and marks, on the ground that they belonged, not to the Carthusian Arder, but to one Father Rey.

5. In connection with the liqueur manufactured at Tarragona, Spain, and sold in this country, during three years or more, last past, *the Monks have not used the marks involved in this controversy.* Indeed, it is clear that they could not have truthfully done so. Instead, there has been used on the bottles containing the Tarragona liqueur a label in evidence as Defendant's Exhibit **Complainant's New Label** (reproduction on the opposite page). From the testimony of Henry Batjer, senior member of the New York house of Batjer & Co., which for about twelve years last past has been the American agent for the sale of the liqueur of the Monks, it appears; that the last shipment of liqueur in bottles bearing the old labels here in dispute, received by that house, was *in 1902 or 1903* (XQ32, p. 642), and that the new label has been that used here "since the Monks had to give up in France and move to Spain" (XQ22, p. 640). It will be noted that this new label is not only in every respect materially different from that here in dispute, but is in distinct terms a repudiation and abandonment of the latter, expressly informing the trade and the public that *"none is guaranteed genuine in the United States unless bearing this new label."*

In this connection see also the Batjer Circular of October 10th, 1904 (p. 1293), containing the statements, among others:

"We beg to advise that the Liqueur will in the future be placed on the market under the label of "Liqueur Peres Chartreux," and in a new style of bottle as per fac-similes appearing above." * * * *

"While *formerly* the Liqueur derived its name *from the monastery of the La Grande Chartreuse*, circumstances have rendered it necessary, under the new conditions, to name it *LIQUEUR PERES CHARTREUX*, after the order of Monks owning the secret process employed in its manufacture" (p. 1293).

For other proof of complainants' use of the new marks and labels to the exclusion of the old, see the following testimony of their own witnesses; Elliott, XQ24 *et seq.*, p. 646; Haan, XQ7 *et seq.*, p. 648; Hirshfield, XQ9, *et seq.*, p. 651; Callahan, XQ7, *et seq.*, p. 660; Oertel, XQ13, *et seq.*, p. 663;

Furthermore, since the adoption of this new label in the latter part of 1904, down to the present time, complainant's American agents have been extensively advertising said new label in American magazines and journals, not merely in trade journals, but in those of general and wide circulation, calculated to bring the new label and the statement contained thereon to the notice of consumers and the public generally. These advertisements have been in such magazines and papers as Harper's Magazine, Harper's Weekly, Life, Puck, Town & Country, Scribner's Magazine, The Century Magazine, Riders & Drivers, and in theatrical programs. (Batjer, XQs27-31, p. 642.) During the same period of time, or since March, 1905, the *only* liqueur advertised in the price list of Batjer & Co. as coming from complainant has been that bearing this new label, which is illustrated in the list (p. 641, and see Exhibit Batjer Price List).

6. Defendant was, at the time of suit brought,

the American agent of the Liquidator, and is now the American agent of *"Compagnie Fermière de la Grande Chartreuse,"* a company which purchased the business, good-will and marks from the Liquidator, and the Chartreuse liqueur sold and offered for sale in this country by defendant and bearing the disputed marks, has been and is solely that made at La Grande Chartreuse, in France, by said Liquidator or his said successor in business (Aubry, pp. 1291-1292).

Paraphrasing the Opinion of the Appellate Court in the preliminary injunction proceedings, it may be said that complainant is asking this Court to enjoin the defendant, who was the American agent of the receiver, appointed by the French Court, and who is now the agent of that receiver's assignee for value (p. 1413), from using the bottles, labels and trade-marks, which his principal has been and is using under the protection of the law, in France, and which complainants have not only long since ceased to use here themselves, but which they have in the most public way repudiated, advising the public that they are not to be accepted as indicating liqueur of their manufacture.

In accordance with the rules regulating the practice in this Court, we herewith insert, in support of our cross-writ of certiorari, the following:

Assignments of Errors.

1. The Court erred in holding that the word symbol "Chartreuse" as applied to liqueur or cordial, is a good and valid trademark independent of the place of manufacture and that the same has been and now is the sole and exclusive property of the Carthusian Monks, whereas it should have held that said word symbol "Chartreuse" is not a

good and valid trademark, and that the same is not the property of the Carthusian Monks, but so far as there are property rights in said word symbol, said rights are the sole and exclusive property of Compagnie Fermiere de la Grande Chartreuse, the defendants consignor.

2. The Court erred in holding that the word symbol "Chartreuse" accompanied by the facsimile of L. Garnier, as set forth in United States trademark certificate No. 3377, registered in the United States Patent Office, January 25th, 1876, (re-registered January 29th, 1884, as No. 10,897), and in U. S. Certificate No. 3989, registered September 12th, 1876, (re-registered January 29th, 1884, as No. 10,898), and as appearing in "complainants' Exhibit Bottle of Chartreuse sold by Batjer & Co.," constitute good and valid trademarks, and that they have been and now are the sole and exclusive property of the Carthusian Monks, whereas, it should have held that said trademarks are not the property of the Carthusian Monks but the sole and exclusive property of Compagnie Fermiere de la Grande Chartreuse, the defendant's consignor.

3. The Court erred in holding that the complainants have the exclusive right to use the aforesaid trademarks or any of them in this country, whereas it should have been held that said trademarks together with the good-will of the business of making liqueur formerly carried on by the Carthusian Monks of the Monastery de la Grande Chartreuse, and of selling said liqueurs so manufactured in the United States, were legally transferred to and are now the exclusive property of defendant's consignor.

4. The Court erred in failing to hold that M. Lecouturier, the receiver of the property of the

Carthusian Monks at the Monastery de la Grande Chartreuse, became possessed of and succeeded to the aforesaid business of the Carthusian Monks together with the good-will and trademarks attached to said business in France and in the United States.

5. The Court erred in holding that property rights exist in said trademarks and good-will in the United States independent of the business as carried on in France and in holding that the property in said trademarks in this country could not be affected by the receivership proceedings in France.

6. The Court erred in failing to find that whatever rights in this country might have remained in the Monks, have become abandoned, and in not holding that said abandonment was a complete bar to complainants' action.

7. The Court erred in finding that the defendant company has infringed any trademark rights of complainants.

8. The Court erred in finding the defendant company guilty of unfair competition in trade, whereas it should have been held that defendant's conduct would not lead anyone to believe that the goods sold by defendant were made by complainants.

9. The Court erred in holding that it does not appear that the Receiver, M. Lecouturier, ever obtained any judicial authority to continue or revive the business of manufacturing liqueurs as formerly carried on by the Carthusian Monks at the Monastery de la Grande Chartreuse.

10. The Court erred in holding that the cordial manufacturing business carried on in Spain by the Carthusians or by la Union Agricola, is a continuation of the business formerly carried

on by the Carthusians in France, whereas it should have been held that the business so carried on in Spain is a new business, and that the parties carrying on the same have no right to use the old trademarks in connection with the product of said business.

11. The Court erred in granting an injunction restraining the defendant company from using the alleged trademark "Chartreuse," or any colorable imitation thereof, or the fac-simile signature of L. Garnier, or of any colorable imitation thereof, or any of complainants' elleged trademarks.

12. The Court erred in granting an injunction restraining defendant from importing or putting out or offering for sale or selling liqueur not made by complainants, in any dress or package similar to those used by complainants, prior to the receivership of M. Lecouturier.

13. The Court erred in awarding to complainants any injunction against this defendant.

14. The Court erred in decreeing any recovery against defendant company in favor of complainants; and in referring the case to a master to ascertain the amount of said recovery, and the quantity of alleged infringing articles now in possession of defendant.

15. The Court erred in failing to dismiss complainants' bill in its entirety for want of equity, and want of jurisdiction, with costs to defendant.

POINTS.

I.

The bill should be dismissed because of want of jurisdiction. Jurisdiction can be based solely in this case upon alleged difference of citizenship, and such difference of citizenship is not alleged in the bill, nor does it appear in the record.

The decision of this Court granting the writ of certiorari is an adjudication that the jurisdiction below depended solely upon the difference of citizenship. This Court does not, in the absence of an express statutory provision, use a writ of certiorari to review the judgment of an inferior court.

American Construction Co. vs. Jackson R. R. Co., 148 U. S., 372, 380.

The action of the Circuit Court of Appeals in modifying the injunction was in no respect in excess of the Court's jurisdiction; nor can it be properly described as such an extraordinary denial of justice as to authorize the issue of the writ under section 716 of the Revised Statutes, as applied in *McClellan vs. Carland*, 217 U. S. 268.

The provision of Section 18 of the Trademark Law of 1905 (United States Statutes at Large, 1905, chapter 592), which gives this court the power to grant a writ of certiorari in cases arising under that statute, does not apply here; because there is no allegation in the bill that the trademarks in question were registered under that

Act. That statute, in Section 17, expressly limits the appellate jurisdiction to "suits at law or in equity respecting trademarks registered in accordance with the provisions of this Act, arising out of the present Act." No case can arise under this statute where the trademark is not registered thereunder. The bill and the evidence taken in its support, show no registration at a later date than January 29th, 1884 (Paragraph V. of Bill; p. 4, Record).

The only provision under which a writ of certiorari can be granted is that in Section 6 of the Evarts' Act. (26 St. at L. page 826.) That section reads:

> "The judgments or decrees of the Circuit "Court of Appeals shall be final in all cases "in which the jurisdiction is dependent entire-"ly upon the opposite parties to the suit or "controversy being aliens and citizens of the "United States or citizens of different States; "also in all cases arising under the Patent "Laws, under the revenue laws and under the "criminal and admiralty cases. * * * In "any such case as is hereinbefore made final "in the Circuit Court of Appeals it shall be "competent for the Supreme Court to re-"quire by certiorari or otherwise, any such "cases to be certified to the Supreme Court "for its review and determination."

This Court had, consequently, no power to grant the writ of certiorari in this case, unless the decree of the Circuit Court was final. In granting such a writ, it has formulated the law for this case, and the well settled rules of its procedure prevent the appellants from asking it to hold otherwise when the same case again comes before it for review.

> "An actual decision of any question settles "the law in respect thereto for further action "in the case."

Mutual Life Ins. Co. vs. Hill, 193 U. S., 551, 553;
Mathews vs. Columbia Nat. Bank, (C. C. A.) 100 Fed. R. 393;
Anderson vs. Messenger, 158 Fed. R. 250;
Messenger vs. Anderson, 171 Fed. R. 785.

In this case, the allegations of difference of citizenship are as follows:

> "Your orator, Pere Alfredo Luis Baglin, of "Tarragona, Spain, Procureur of the Order "of Carthusian Monks, Convent La Grande "Chartreuse, for himself and all the other "members of said Order, brings this his bill "of complaint against Cusenier Company, a "New York corporation, located at and hav-"ing its principal office and place of busi-"ness at No. 110 Broad Street, in the Bor-"ough of Manhattan, City and State of New "York, within the Southern District of New "York."

There is no sufficient allegation that the Procureur Baglin is a subject of the King of Spain, nor that the other members of the order of Carthusian Monks in that convent, or elsewhere, are such citizens; and there is no sufficient allegation that the Cusenier Company is a citizen of the United States.

(a) The description of a party as "of Tarragona, Spain," is insufficient to show that he is a citizen or subject of the Kingdom of Spain.

Stuart vs. Easton, 156 U. S. 46;
Grand Trunk R. R. Co. vs. Twitchell (C. C. A.), 59 Fed. R., 727; 8 C. C. A., 237; 21 U. S. App., 45.

If the evidence may be examined, that would not help the complainant; for this merely shows

that he is domiciled in Italy, and in no way indicates his citizenship (Rec., p. 169).

In *Knight vs. Lutcher & Moore Lumber Co.*, 136 Fed. Rep., 404, it was expressly *held* that an allegation of domicile is not equivalent to an allegation of citizenship. Domicile is nothing more than permanent residence.

In his treatise on Domicile, Mr. H. Gerald Chapin, 14 Cyc. 834, says:

> "A man may have a commercial, a political, "or a forensic domicile, and all of these may "exist at one and the same time and in "different localities." Citing
>
> *Smith vs. Croom*, 7 Fla. 81, 151.

Domicile is thus defined by Mr. Justice Story in his Conflict of Laws, Section 41, as that place

> "where he has his true, fixed, permanent home "and principal establishment, and to which "whenever he is absent, he has the inten-"tion of returning."

There are many persons domiciled in the United States, as in other countries, for example in the Mohammedan countries and in South and Central America, where persons are born and have their domicile in one country, but retain their citizenship in another.

(b) The description of the defendant simply as "a New York corporation" and "having its principal office and place of business in the State of New York," is insufficient to constitute an averment that it is a citizen of that State. Non-constat, but that it was organized elsewhere and has merely its principal place of business in that State. It may be an alien corporation, as its name suggests.

> *New York & New England Ry. Co. vs. Hyde* (C. C. A.) 56 Fed. R. 188, 191.

It has been *held*, that the allegation that a corporation is a citizen of a certain State is insufficient for the purposes of the jurisdiction of the Circuit Courts.

Thomas vs. Board of Trustees of the Ohio State University, 195 U. S. 207;

Dalton vs. Milwaukee Mechanics Ins. Co., 118 Fed. R. 876.

Lafayette Ins. Co. vs. French, 18 How. 404, 405:

"The averment that the company is a citi-
"zen of the State of Indiana can have no sen-
"sible meaning attached to it."

Muller vs. Dows, 94 U. S. 444, 445:

"It is therefore necessary that it be made
"to appear that the artificial being was
"brought into existence by the law of some
"State other than that of which the adverse
"party is a citizen."

Winkler vs. Chicago & E. I. R. R. Co., 108 Fed. R. 305;

American Sugar-Refining Co. vs. Johnson (C. C. A) 60 Fed. R. 503;

De Loy vs. Traveler's Ins. Co. of Hartford, 59 Fed. R. 319;

Frisbie vs. Chesapeake & Ohio Ry. Co., 57 Fed. R. 1;

Lonergan vs. Illinois Central R. R. Co., 55 Fed. R. 550.

II.

Even if the question whether the Court below had jurisdiction on the ground that the case arises under the constitution or laws of the United States were open, and not decided by this Court, the bill should be dismissed, because there are no allegations in the bill which show that the case arises under the constitution or laws of the United States, and the evidence shows that the word sought to be protected is not one which can be validly registered as a trademark, nor is there evidence showing that the right to any such trade-mark is vested in the complainants.

(a) The bill avers in paragraph V that the trade-marks were registered under the trade-mark law of 1881, and, as demonstrated in our preceding point, this is the only statute which gives the Court jurisdiction of this case in the absence of a difference of citizenship. That statute provides that owners of trade-marks used in commerce with foreign nations can register such trade-marks if they are domiciled in the United States, or in any foreign country which offers similar privileges to citizens of the United States. The bill does not allege that the place where the complainants are domiciled is in a foreign country which offers similar privileges to citizens of the United States. It consequently does not state a case under that trade-mark law.

Moreover, section 11 of that statute expressly provides that nothing contained in the act shall be held to "confer jurisdiction on the Court, irrespective of the existence of diversity of citizenship unless the trade-mark in controversy is used on goods intended to be transported to a foreign country or in lawful commercial intercourse with an Indian tribe."

A foreigner who applies his trade-marks to goods intended to be so transported has the same privilege as a person domiciled here; but this law does not provide for the registration of any trade-mark intended for goods which are imported from a foreign country into this country and not exported from the United States. Whatever may be the rights of the foreigner at common law, in such a case he is not entitled to registration under the terms of the statute. This bill does not aver that the defendants' liqueurs were exported from the United States to foreign countries. It appears clearly from the allegations in the bill that the complainants seek solely to maintain the exclusive right to their alleged trade-mark when placed upon liqueur imported into the United States.

The allegation in paragraph V. that the trade-mark had been "used in commerce between the United States and a foreign country," is a mere conclusion of law and has no effect. There are few more difficult questions of law than the determination of what constitutes commerce "with foreign nations and among the several States." Moreover, the facts pleaded, and the undisputed evidence, show that the liqueur is imported from a foreign country and is not transported to a foreign country.

(b) The alleged trade-mark sought to be pro-

tected in this suit is the word *"Chartreuse"* (p. 4).

The original meaning of the word sought to be protected is purely geographical.

This fact is proved by the statement of the most eminent authors who have treated the subject. Extracts from such works will be found on pp. 1234 and 1235 of the transcript. It is admitted by the complainants. The following question was put to Father Baglin (p. 248):

> "XQ.530. Will you tell me from where the 'Chartreux (Carthusians) took their name? A. They took their name from the place, from the Grande Chartreuse, because they lived there.
>
> "XQ.533. I quote 'La Grande Chartreuse par un Chartreux' a book sold by you, I believe? A. Yes, sir.
>
> "And which says:
>
> "The valley of the Chartreuse takes its name from the village of Saint-Pierre de Chartreuse, in Latin 'Carturissium.' One formerly said 'Chartrousse' or 'Chartrosse,' a pronunciation which is still found in the word 'Chartroussette' or 'Chartrossette,' names designating small dales 'covered with pastures and woods.'"

On re-direct examination, plaintiff testified that the author of this book was not a specialist and not qualified to put forth opinion of this kind but from the extracts from such authors as Littré, Larousse, and Beschelle, which are found in the evidence, it appears that he followed the generally received opinion and the complainant has completely failed to show that a contrary opinion is entertained by any other author on the subject.

The circular issued by which defendants' agent to introduce the new liqueur "Pères Chartreux"

expressly stated that "formerly the liqueur derived its name from the Monastery of the Grande Chartreuse (p. 1293, Record).

If the plaintiff has any right to be protected in the use of this name, it must be because of the claim that the words have acquired a secondary meaning indicating that it was the liqueur manufactured by them.

In all the cases sustaining the claims of the plaintiff, the decision has been put on that ground. So when the case came before the English Court of Appeals, whose jurisdiction was not limited as is that of the Federal Courts, Lord Chief Justice Alverstone said:

> "I have not the slightest doubt that for a great many years before 1901, the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market a secondary meaning, that it was a liqueur manufactured by the Monks of the Monastery." (L. R. 2 Ch., 1908, p. 723).

And when the cases between these parties came before the House of Lords (L. R. Appeal cases, 1910, page 269), Lord Shaw quotes with approval these words of the Lord Chief Justice.

The decision of the Circuit Court of Appeals in this case is to the same effect.

> "Its primary meaning (speaking of the word 'Chartreuse') was undoubtedly geographical, but it acquired afterwards a secondary meaning." (p. 1586 of the Record).

It is the settled law of this Court that even where a geographical word acquires a secondary meaning so that its use by another party would give rise to an action for unfair competition, that fact is not sufficient to give this Court jurisdiction on the ground that the case arises under the laws of the United States.

Elgin Watch Co. vs. Illinois Watch Co., (179 U. S., 665, 677).

(*) The trademarks were registered in the name of Marcelle Grezier, not in the name of the order itself. There is no evidence of any assignment to the complainants of such trademarks.

III.

None of the assignments of error of the complainant are well taken.

The Circuit Court expressly adjudged that the word symbol Chartreuse is a good and valid trademark and has been and is now the sole and exclusive property of the complainants, (p. 1567, 1582 of Record), that the defendant has infringed said trademark (p. 1567). This part of the decree has been expressly affirmed by the Circuit Court of Appeals. The only modification it made in the decree of the Court below was to allow defendant to use the word "Chartreuse," not as a symbol, not to designate the liqueur itself, but simply to indicate the place of manufacture. It was allowed to use the word "Chartreuse" if so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants. The intention of the Court and the extent to which it intended to modify the decree of the Court below are made perfectly clear by its reference to the English decisions of the Court of Appeals, which it evidently intended to follow (p. 1589 of Record). In that case the defendants were enjoined to use the word "Chartreuse" as "the name of or a description of the liqueurs or without clearly distinguishing the liqueurs so sold from the liqueurs manufactured by the plaintiff."

It also appears from the labels which are made

part of the opinion of the Courts, by which it indicates what use of the word "Chartreuse" can be made by the defendant.

In view of this express finding by the Circuit Court, which were affirmed by the Circuit Court of Appeals, we are at a loss to understand how the complainant can assign as error (as he does in various forms in his 4th, 6th and 7th assignment), that the Court did not hold that the word "Chartreuse" is a good and valid trademark, and that complainants have not been divested of their exclusive ownership therein. It is true that the recognition by the Court of the fact that the primary meaning of "Chartreuse" was geographical should have led it to adopt the conclusion that it could not constitute a valid trademark. But it is difficult to see how the complainants have been injured because it erroneously decided the point in his favor.

The plaintiff assigns as error that the defendant was permitted to use the word "Chartreuse" in any manner and the label set out in the majority opinion, or any label similar thereto.

If the action is based on unfair competition, such modification by the decree below by the Circuit Court of Appeals is in harmony with all the decisions on the subject.

Under no view of the case could the plaintiff sustain the claim to prohibit this defendant from telling the exact truth or to designate truthfully the name or place of fabrication, or its own corporate name. The cases on which the greatest reliance is placed by the plaintiff expressly decide this point in our favor. So in *Thompson vs. Montgomery L. R.*, 41 Ch. Div., 35, (the *Stone Ale* case), it was decided that while the defendant could not use the words "Stone Ale" because

it had acquired a secondary meaning, was at liberty to state in his labels that his ale was manufactured at Stone.

The same rule should then be applied to this case, as is applied to cases where a person is restricted in the use of his own name, namely, that he must use it in such a manner so as not to make the public believe that he is a well known manufacturer bearing the same name.

The same doctrine was laid down by this Court in the case of *Elgin Co. vs. Illinois Watch Company* (179 U. S., 665, p. 667). In that case it was held that where the word "Elgin" had acquired a secondary meaning, its use by the defendant should be prohibited only in so far as its use constituted unfair competition.

It hardly requires any argument to show that there is nothing unfair in stating, as is the exact truth, that our liqueur is made in the domain known as la Grande Chartreuse or by a corporation which has rented that domain. It cannot be said for a moment that, when the trademarks and business were sold at auction by the French Government, a French company, formed primarily to do business in France, was guilty of any fraud or intention to deceive, by choosing a name simply setting out the fact that it had acquired the business so sold.

But even if it were true that "Chartreuse" is a technical trademark, the modification made in the decree below was correct and the use of the label was rightly allowed. The object and nature of a trademark is to indicate origin and ownership; it stands as a symbol of the article it describes. The eminent trademark lawyer who registered the complainants alleged trademark, was careful to describe the trademark not as a word but as a word-symbol.

The claim of complainant that the use of the word is an infringement of his rights, even if it is not used to designate an article, but merely the place of its manufacture, and the name of its manufacturer, is entirely untenable; it is based on a confusion of the idea of copyright with that of trademark. In fact no such injunction was asked for in the bill. All that is asked is that the defendant be enjoined from making use of the *name* Chartreuse in connection with liqueur.

The other assignments of error relates to findings of fact and will be discussed in other parts of this brief.

After the opinion of the Circuit Court of Appeals was handed down, counsel of the complainant asked to have it modified by requiring the defendant to state on its label that the liqueur was not manufactured by the Monks. He assigns this refusal to thus modify the opinion as error (Assignment 16, p. 1608). We cannot answer his contention better than by citing the communication addressed to him by Judge Coxe:

> "Everything identifying the defendant's liqueur with the Monks has been ordered off the bottle and the defendant is directed to state that the liqueur is made by the Fermier Company. Having stated affirmatively that it is made by Jones, it does not seem necessary to add that it is *not* made by Smith. We think that no one can be deceived by the label suggested by us unless his mental powers have been hopelessly impaired."

The other assignments of error relate to findings of fact and will be discussed in other parts of this brief.

IV.—The bill cannot be maintained as a bill to enjoin infringements by the complainant of a trade-mark, as the primary meaning of the word "Chartreuse" is geographical and no use of the word as is trade mark by defendant proved.

We have called the attention of the Court to our position when discussing in Point II the question whether it can be said that a controversy arises here under the laws of the United States. If the Court should not agree with the position taken by us, that the allegations of diversity of citizenship are insufficient, and should consider itself at liberty to consider the question whether or not a common law trade-mark has been proved, we submit that the authorities cited, and especially the case of *Elgin Co. vs. Illinois Watch Co.*, 179 U. S. 665, 667, conclusively show that the word "Chartreuse" cannot constitute a common law trade-mark.

The claim of the complainants is based on the assumption that the defendant's trade-mark is of such a nature that it does not indicate the origin of the article, but is indicative of ownership and the name of the manufacturer. It is practically undisputed that the word was originally geographical in its meaning. If it now indicates the ownership and nothing else, so that it cannot be used by the party who occupies the very place where it originated and can be used by the original manufacturer, even though he manufactures on an entirely different place, it can only be because it has acquired a secondary meaning and not because it originally constituted a valid trade-mark.

The ground of the relief would be "fraud of the defendant not any exclusive right on the part of the complainant."

Ex parte Farmer Co., 18 Off. Gaz. 412.

It is only on that ground that geographical terms, are protected, *Ex parte Farmer Co.*, 18 Off. Gaz. 412.

Whenever a name applied to an article, is descriptive either of its component parts or of the place where it is made it cannot be appropriated.

Pillsbury Co. vs. Eagle Co., 86 Fed. R., 608;
Waltham Watch Co. vs. U. S. Watch Co., 173 Mass., 85;
Wolf vs. Goulard, 18 How. Pr., 64, 66, 67;
Lea vs. Wolf, 46 How Pr., 157, 158.

The rule is well laid down by the leading authority, Mr. Henry William Browne, in his "Treatise on the Law of Trade-Marks" and analogous subjects, Second Edition, Section 182, p. 193:

> "A *merely* geographical name cannot be a "trade-mark. Yet decisions are sometimes re- "lied on to support a contrary doctrine; but if "carefully scrutinized, it will be perceived "that they are trade-mark matters in name "only, and in reality belong to the domain "of good-will. The distinction is important."

It nowhere appears from the evidence (and this point has been adverted to in the opinion of the Circuit Court of Appeals), that the complainants ever used the trade-mark "Chartreuse" to designate the liqueur itself. They only used

the word in a purely geographical sense, when stating that the liqueur was made at the Grande Chartreuse and by blowing the words "Grande Chartreuse" into the bottle. The name was given to it by the public as an abbreviation of the label, not by the complainants. Such designation by the public; without any actual use on the part of the complainants, is insufficient to form the basis of a trade-mark right.

Durham Smoking Tobacco Case, 3 Hughes, 111, 167.

V.—There was no business or good will vested in complainants in this country separate and apart from the business and good will in France.

It is, of course, a necessary part of complainants' contention that they have trade-mark rights in this country separate from, and independent of, the rights in France, of which they seem to concede they have been divested. This we submit is fallacy.

A sufficient answer to this part of complainants' contention would seem to be that our law does not recognize any trade-mark rights save as *incident to a business*, and that the one business to which the marks here concerned are incident is one which is, and always has been, carried on at La Grande Chartreuse, in France, to which establishment the marks expressly point and that the business of that factory, although formerly owned and carried on by the Monks, has for more than three years last past been owned and carried on by defendant's principals. While, under some circumstances, there may be a severance of the right to a particular

trade-mark so that the same mark may be the property of different persons in the same or in different countries, no circumstances constituting such a severance appear in the present case. The business, and the only business with which the marks in question are, and always have been, here and elsewhere connected, is the establishment La Grande Chartreuse. It is not pretended that the marks have been used in this country at any time save in connection with the product of that factory.

Under such circumstances, if it be conceded, as it appears to be, that the French Government has acquired and sold the property (plant and business) in France, it follows, we submit, as a matter of course, upon the facts as they appear in this record, that the trade-marks in this country followed. There is not here any independent business or good will, and therefore there are not here any independent trade-mark rights. The good-will of which the trade-marks are an incident is simply part and parcel of the manufacturing business carried on at La Grande Chartreuse, France; this country is simply part of the market for the product of that business, and if the Monks have been divested of that business, and it is now lodged in other hands, then they no longer have any right in the trade-marks here. To say that this is to give the French law and judgments extra-territorial effect is simply to argue that the business and good-will in this country have some existence independent of the business at La Grande Chartreuse, and for this there is no authority in the facts of the case, or as a legal proposition.

We submit that the proofs clearly show present ownership of the business and good will represented by the disputed marks is in defendant's principal.

As said by Judge Wallace in *Knoedler vs. Boussod,* 47 Fed. Rep., 465:

> "The good will of a business comprises its advantages which may inure to the purchaser from holding himself out to the public as succeeding to an enterprise which has been identified in the past with the name and repute of his predecessor."

If it be conceded that the use by defendant's principal, and by defendant as its American agent, of these disputed marks, is a representation to the public that the defendant has succeeded to an enterprise identified in the past with the name and repute of the Monks, its predecessors in that business, to that use of the marks defendant and its principal are entitled. As to this, the weight of authority is all one way, yet complainants ask this Court to deprive defendant's principal, through defendant in this country, of that obvious right.

It may be observed, however, in passing, that it is by no means necessary for the purposes of this case, to determine whether defendant's principal has exclusive title to the disputed marks which it could enforce in our Courts. It is quite sufficient to defeat complainants' action if the proofs leave any doubt that *complainants* have the present title to the marks.

VI.—The disputed marks and the phrase, "Chartreuse," as applied to a liqueur, are primarily significant of place of manufacture; the complainants have failed to prove that they have acquired a secondary meaning and refer merely to the fact that the article is of their manufacture.

The labels used by the complainants have no indication showing who the manufacturer is and the evidence hereinbefore referred to is conclusive of the fact that primarily the word "Chartreuse" was a geographical term. The decisions of the French courts are unanimous in holding that it was used as an abbreviation of the label.

The local significance which the rescriptive phrase "Chartreuse" has in the public mind as descriptive of the liqueur, is evidenced by the Century Dictionary definition, which is as follows:

> "A highly esteemed tonic cordial obtained by the distillation of various aromatic plants, especially Nettles, growing on the Alps. It derives its name from the celebrated monastery of the Grande Chartreuse in France, where it is made."

This definition, which is accepted by two at least of complainants' very zealous witnesses (*Callanan*, XQ10, p. 660; *Dunwoody*, XQ9, p. 665) certainly points not to person or persons, or to the supposed skill of any particular individuals, or to a supposed secret, but to the *locale* of the factory and the character and the locality of the vegetable ingredients. The testimony of defendant's American witnesses also is to the effect that the trademark is to them indicative of the place of manufacture, and the more so that they have under-

stood the plants of that particular locality to be important items in the quality of the liqueur. *Blanc*, Q7, *et seq.*, p. 1278; *Mundell*, Q9, p. 1282; *Chauvelot*, Q9, *et seq.*, p. 1285; *Orteig*, Q16, *et seq.*, p. 1288; *Peirce*, Q14, *et seq.*, p. 1311; *Medary*, Q6, *et seq.*, p. 1316, *et seq.*

The claim of the complainants is that the word "Chartreuse" and the labels have lost whatever geographical meaning they originally possessed and that they are now understood as designating a liqueur made by the Carthusian Monks irrespective of the place where such manufacture takes place. They invoke the authority of cases like *Wotherspoon vs. Currie*, L. R. 5, H. L. 508, and *Thompson vs. Montgomery*, 41 Ch. Div., 35, 50, which hold that the exclusive right to such words and labels will be recognized. It is to be noted that the circumstances in all the cases above cited, which controlled the decision was, that there was nothing in the place where the manufacture originally took place which contributed to the fame acquired by the article. So in the leading case of *Wotherspoon vs. Currie*, L. R. 5, H. L. 508 (The Glenfield Starch case) the Lord Chancellor said (p. 512):

> "Now, what is Glenfield. Glenfield is not a town like Burton-upon-Trent, from which ale is named, and in which there are many manufacturers of the so-called Burton ale. Nor is it a place which has any special circumstance connected with it (although something was attempted to be said about the water used in the manufacture) which would make the starch manutactured there particularly good."

and in the case of *Thompson vs. Montgomery* (L.

R., 41 Ch. Div., 35). (The Stone Ale case), the same reasoning is found.

An entirely different state of affairs is found in this case. It has never been claimed in all the numerous cases which were brought by the Carthusian Fathers in defense of their rights, that the mark designated exclusively their manufacture, irrespective of the place where the manufacture took place. On the contrary, in all the decisions they obtained it was expressly held that the word "Chartreuse" as a designation of the liqueur, originally an abbreviation of the label, had come to designate both the persons by whom it was manufactured and the place where the manufacture took place. This was also held in the case of the *Carthusian Monks vs. Bauer* (120 Fed. Rep., 78):

> "It was called 'Chartreuse' because it was invented and made at the Monastery and made by the Carthusian Monks."

This expression is not inadvertent as complainant tried to claim in his brief, but it exactly follows the numerous French decisions where this question was litigated. In some of them (see decision Lyons, Court of Appeals, 1st of Aug., 1879, Rec. p. 1384), it is held that it designates "*particularly* the place of manufacture." A résumé of these decisions can be found in the Dournon Report (pp. 1371 to 1394). We call particularly attention to the Court, to p. 1392, as throwing a light on the position adopted by the complainants as late as 1896, as to the meaning of the word "Chartreuse." It seems that the defendant in one of the cases, a Mr. Meunier, claimed the right to use the name "Chartreuse" on the ground that the secret of manufacture had been revealed to him by the Monks. In answer to this contention, counsel for the Monks stated:

> "The communication of such secret could

have no other effect than to place Charles Meunier in a position where he could manufacture an elixir bearing more or less similarity to that of Father Garnier; such communication could not give him in any way the right to sell such elixir *under the name of elixir of Grande Chartreuse* or to make use of a name which could not belong to him and that even Dom Reviere had no right to assign to him. Can a manufacturer of Elbeuf cloth who communicates to a manufacturer of Voiron all his processes of manufacture transfer to to latter the right to designate the *cloths manufactured at Voiron*, according to the Elbeuf processes, by the name of 'Elbeuf cloths.'"

We also call attention to the case cited in the Extract of Jurisprudence found on p. 1346 and particularly to the decision of the Court of Grenoble of the 8th of February, 1886, holding (in a case involving the right to the identical trade mark) that the place of manufacture should be considered as being not only the place where the liqueur is prepared, but also the place where the plants, with which it is made, are grown.

An even more recent decision on the same point and which was between the parties to this suit, is the decision of the 18th of May, 1905, of the Tribunal of Grenoble. (Complainants' Exhibits, pp. 701 to 717).

This was an action brought by Lecouturier as Liquidator against the Pères Chartreux to enjoin them from using the word "Chartreux" in the sale of their liqueur. He claimed that such word was an infringement on the word "Chartreuse," the right to which word was originally vested in the Abbé Rey, to whose rights Mr. Lecouturier had succeeded in virtue of the decree appointing him liquidator of the Carthusian Monks. The Court denied the injunction and said:

"Whereas the mark filed by the Abbe Rey does not contain the word 'Chartreux' and that *even the word Chartreuse which has been filed by him has never been employed as a trade-mark applied to his products; as his labels contain only the words 'Cordial manufactured at the Grande Chartreuse,'* as the numerous documents of jurisprudence which have decided in favor of Abbe Rey and of its authors the ownership of the word Chartreuse, by claiming that the word *is only an abbreviation of the label* which recalls the name of those who manufacture the Chartreuse, and ESPECIALLY THE PLACE OF MANUFACTURE, the Grande Chartreuse (Applications, Aug. 10, 1880), have never taken the word Chartreux as constituting an element of the mark on which it does not appear; that if indeed the Tribunals have condemned, as counterfeiters, merchants who have called their cordial 'Cordial of the Chartreux' and have shown the monks and the convent on their label, it was because these dealers in cordials have, contrary to the law of July 28, 1824, placed on their label a supposititious name of a *place* and have attributed to themselves the name of a manufacture which did not belong to them (Judgment of the Seine of the 8th of March, 1853)."

This is not a case where a mark points, in the minds of the public, *exclusively* to the skill of a particular person or persons, that is to say, has become in the public mind associated solely with the known skill of some particular individual or individuals. In the present case, however, the significance of the mark is primarily local—it indicates a particular *place* and *establishment*, and although, of course, complainants have readily found witnesses, many of them directly interested, to say that they, and, *in their opinion*, others, regard not the place, but the Monks, as the material signification of the marks, *not a single*

member of the public unconnected with the trade but simply a consumer of the liqueur, has been found to say so, and on the other hand, defendants produce testimony to the contrary effect.

Here it is sufficient to observe that the proofs in this case, and the prior decisions—domestic and foreign—referred to by complainants on this subject, show at most that, so far as the mark has any personal significance in the minds of the public, it has never pointed to the particular skill of some particular individual or individuals, but simply to the Carthusian Monks generally, at "La Grande Chartreuse," as the supposed proprietors and operators of the liqueur factory there.

As much may be said as to the "personal" character of almost any trade-mark which has been in use for any length of time, and of course is very far from making the marks exclusively personal.

The obvious significance of the marks is purely local—they point to a particular establishment, and if it be conceded, for the sake of argument, that in course of time and before the removal of the Monks from France they pointed to the Monks as well as to the establishment, it was only in the same general way and sense in which any trade-mark indicating the goods of a particular factory producing goods which are in demand may be said to become associated with the known proprietors and operators of that factory.

The complainants attempt to establish the fact that the words always indicated the manufacture by the monks, irrespective of the place of manufacture, by the testimony of witnesses who testify to the fact that such was their understanding.

In the first place it is to be remarked that as the defendant has produced a number of witnesses

who declare that to their minds the place of manufacture was of the greatest importance, the fact that others were of a different opinion could never warrant the claim made by the complainants. If a part of the public believes that "Chartreuse" means a liqueur made in the domain of the Grande Chartreuse and at no other place, it would be a fraud as against such persons to allow the use of such word by anyone who does not manufacture at such place.

Moreover, the evidence of the witnesses produced by complainants is worthless because such impression was formed at a time when the monks were still established at the Grande Chartreuse and therefore the question which one of the two elements predominated in their minds had never been actually presented to them.

Evidence of this kind was condemned in *Cellular Clothing Co. vs. Maxton & Murray*, (L. R. App. Case, 1899, pp. 326, 343). In that case it was attempted to show that the word "Cellular," originally a descriptive word, as applied to certain clothing, acquired a secondary meaning, and that it designated the work of the plaintiff. Lord Davy said:

> "The other observation which occurs to me is this: that where a man produces or invents, if you please, a new article and attaches a descriptive name to it—a name which as the article has not been produced before, has, of course, not been used in connection with the article—and, secures for himself either the legal monopoly or a monopoly in fact of the sale of that article for a certain time, the evidence of persons who come forward and say that the name in question suggests to their minds and is associated by them with the plaintiff's goods alone is of a very slender character, for the

simple reason that the plaintiff was the only maker of the goods during the time that his monopoly lasted, and therefore, there was nothing to compare with it, and anybody who wanted the goods had no shop to go to, or no merchant or manufacturer to resort to except the plaintiff. And on this point I adopt what was said in felicitous language by Fry, *L. J.*, in *Siegert vs. Findlater*. * * * My Lords, the second class of proof is that of witnesses who say in effect this: 'If I heard anybody in the trade speak of cellular goods, I would understand that it meant the product of the Cellular Clothing Company.' Well, my Lords, so long as the Cellular Clothing Company were the only company who were making cellular goods that would not be astounding, and so long as they retain the monopoly no doubt that might be the case; but, as I have already said in speaking of the proposition generally, it is in fact very slender evidence upon which to found a superstructure which the pursuers' counsel endeavored to erect upon it, and indeed, unless the gentlemen who gave evidence of that kind know that there are other manufacturers making similar classes of goods, there is no subject of comparison."

The evidence shows that there is abundant reason why the public should attach great importance to the fact that the liqueur is manufactured in the domain of the Grande Chartreuse.

Complainant Baglin, in his deposition, has distinctly admitted both the fact alleged by defendant, that for years the Monks claimed the essentiality of such plants, and the further fact that they are essential, and it does not help complainants' case, or the testimony of the witness, that he subsequently chose to contradict himself on this point. This testimony is so suggestive as to the quality of the entire deposition that princi-

pally for that reason we quote at some length from it.

"XQ296 (p. 213). Have not the Carthusians spread the report among the public of the pretension that Chartreuse was of special value *because of the plants which grew in the domain of the Grande Chartreuse?* A. Not in the domain, but in the group. It is necessary to make the distinction."

* * * * * * *

"XQ335 (p. 216). Therefore, there is absolutely nothing in the group of the Grande Chartreuse which can be of use to the gathering of the plants? A. What is the meaning of your question?

BY MR. KELLY (to the Stenographer): Will you repeat the question? (The stenographer reads question No. 335).

"A. *There are some plants which grow in the group of the Grande Chartreuse, and which do not grow* elsewhere, *a few.*

* * * * * * *

"XQ339. It is an essential part of the secret? A. Essential, yes.

"XQ340. *You cannot do without these plants?* A. *No, sir.*

"XQ341. It is absolutely necessary that you have them? A. *Yes.*

"XQ342. Is there one or are there several plants which only grows at the Grande Chartreuse which are indispensable to you for the manufacture of Chartreuse? A. You say 'at the Grande Chartreuse,' but it is the entire group.

"XQ343. Well, I speak of the group of the Grande Chartreuse? A. Yes, sir, *there are some which are necessary to us.*

* * * * * * *

"XQ351. Therefore, the plants *coming from the Group of the Grande Chartreuse* have a certain importance? A. Some, yes.

"XQ352. An essential importance? A. *Essential, yes, in this way, that one has never manufactured the liqueur without them.*"

The witness subsequently got tangled up in hopeless contradictions so that, as stated by his counsel (p. 261, fol. 1044): "His statements at certain moments appear irreconcilable, or, at least, obscure," yet nowhere does he contradict his statement that some plants which were essential, were only found in the group of the Grande Chartreuse, but (p. 225, fol. 900, and p. 213, fol. 849) he supplements it by saying that while formerly it was believed, that no plants which were used in the manufacture and which were grown in the Grande Chartreuse, could be replaced by other plants of the same kind grown elsewhere, that belief no longer exists.

For the point now under discussion the actual belief of the complainants is absolutely immaterial as to this point is. The fact that they believed for a long time that the plants used by them for the manufacture acquired a peculiar virtue by being grown in the Grande Chartreuse, is strong evidence in support of the proposition that the "legend" (as it is termed by some of the witnesses) existed among the consumers of the liqueur, and that for that reason, they attached importance to the place of manufacture.

The importance of being in a position to make use of the herbs grown at the Grande Chartreuse in the same manner as was done by the Monks before their expulsion from France, is shown by the fact that while formerly M. Cusenier, himself, tried unsuccessfully to make a liqueur which in taste and flavor was equal to the liqueur manufactured by them, he has now succeeded, since hav-

ing gained these privileges, in making a liqueur, which, as we shall show, is proven by a large preponderance of evidence to be absolutely undistinguishable from the liqueur formerly made in the Monastery. M. Cusenier attributes this success exclusively to the fact that he now has access to the place where the herbs grow (fol. 216, *e. g.*, Compl. case; see also testimony of M. Tièche):

> "When I went to Fourvoirie, you know, I found myself in the very best condition to manufacture the liqueur. I found myself among plants cultivated by the Fathers, the Carthusian Fathers, plants which altogether different from the plants which we had up to that time for the manufacture" (p. 1035).

VII.—Complainants cannot maintain this suit, because the marks which they seek to enjoin defendant from using, cannot be used by themselves.

That complainants could not themselves under existing circumstances truthfully, and therefore legally, use upon their present product, the marks which they seek to prevent defendant from using here, has been tacitly admitted by their own conduct and is too palpable for serious dispute. The marks are, and always have been, attached to a particular business carried on at a particular place, with which business and which place complainants ceased more than three years ago to be connected.

A trade-mark attached to a place is of no value to the original proprietor because he could not use it without deception, *and therefore would not be protected in its exclusive enjoyment.*

> *Atlantic Milling Co. vs. Robinson*, 20 F. R., 218;

Dixon Crucible Co. vs. Guggenheim, 3 Am. L. T., 228;
Hudson vs. Osborne, 39 L. J. Ch. N. S., 79;
Shipwright vs. Clements, 19 W. R., 599;
Hall vs. Barrows, 4 DeG., J. & S., 150;
Monson vs. Bochm, L. R. 26, Ch. D., 398-405.

Complainants cannot contend that the "place" is immaterial, or material only as connected with themselves, for the reason, among others, that for years, while carrying on business in France they spread and caused to be spread the report (p. 28, *supra*) that their liqueur owed its peculiar properties to herbs and plants grown in the immediate vicinity of La Grande Chartreuse, and though they now seek to contradict this, they at the same time stultify themselves by trying to prove that in the liqueur now made by or for them at Tarragona, they use these same herbs and plants, going to the trouble and expense of having them gathered in the Chartreuse region and transported from Grenoble to Tarragona. The evidence proves that the same results are not obtained after the herbs have thus been transported a long distance.

The complainants themselves admit that they cannot use the labels without a counter-label indicating that the place of manufacture is changed, but they claim that they are entitled anyhow to the good-will which is attached to the fact that the article is made by a secret formula and the monks themselves.

We discuss in another point the question whether such secret formula, in view of the fact that we produce the identical article, can be said to be of any importance, but, admitting that it was, we claim that there is absolutely no evidence that

the article is manufactured now according to such formula. No one connected with the manufacture in Tarragona is produced. The only testimony of what happens there is that of Father Baglin, who expressly states "that he does not know what is going on there" (p. 266, fol. 1064).

But even assuming that the Monks are in possession of a secret formula, it is evident that, even apart from the difference of material, the manufacture is done under circumstances entirely different from those which existed at the time that it took place in Fourvoire and the Grande Chartreuse.

Father Baglin expressly testifies that at that time there was a constant surveillance by the highest authority of the mode of manufacture—both the Prior and the Procutor superintending the business, the latter passing a great part of his time at Fourvoirie (p. 186, fols. 743, 744), that the manufacture took place under the direct superintendence of the heads of the Order is expressly alleged in the complaint. An entirely different state of affairs exists now. No one superintends the production, except a single ordinary Monk who directs the fabrication (p. 191, fol. 761). That man is not called as a witness, and the product is sold through the industrial corporation, *The Union Agricola.*

The alleged identity of the Tarragona product with that formerly made at the Grande Chartreuse in not proved. No one having personal knowledge testifies to that identity, and all the established facts in the case indicate a probable lack of identity, for the reason, among others, of the change of location, and consequent inability to procure the same ingredients in the same condition.

If it is true, as testified by complainants' wit-

and exploitation was in the hands of the Monks, nesses, that the fact that the entire fabrication was the material element, that "they trusted to the honesty of the Monks" (Batjer, p. 639; Riviere, 78), then it would be a fraud on the public, under the changed circumstances, to allow the complainants to say that they continue the same business which was formerly conducted by the Monks in the Grande Chartreuse, entirely irrespective of the fact that they no longer possess the natural conditions which were inseparably connected with such place of fabrication.

If they do not in any sense succeed to the business they cannot claim the trade-mark. There is no such thing as a trade-mark in gross. It must be appendant to some particular business.

Weston vs. Ketcham, 51 How. Pa., 455;
Kidd vs. Johnson, 100 U. S., 617.

VIII.—The complainants have failed to prove that this defendant falsely represents that the liqueur sold by it is made in accordance with any recipe of complainants' or that it is guilty of any misrepresentation in stating that its liqueur is identical with that formerly made by the Monks.

The complainants charge that we represent that the article sold by us is made according to the secret formula of the Monks. There is not a particle of evidence to that effect. Father Baglin, when asked whether the defendants had ever represented that they manufactured Chartreuse according to the *secret formula* (p. 199, fol. 794), says: "*They do not know it.* They cannot pretend that (fol. 796). I do not believe they can"

(p. 200, fol. 797), and when met with the allegation in the petition he could only say, "That was not written without reason and once upon a time I must have had all the documents, either verbally or written, to enable me to write that" (fol. 798). They are not in his mind. He does not know whether there is anybody who can produce them (p. 201, fol. 801), and when asked to produce any justifications of his accusations (fol. 804), he remained silent.

It was pointed out in the majority opinion of the Court of Appeals upon the preliminary injunction proceedings, that such charges as these, being charges of fraud, place upon the complainants the burthen of clear proof, and that such allegations and defendant's denials could not properly be adjudicated without full proof based upon analyses. Of course, the burthen upon this question is upon plaintiffs, who, if they would succeed, must prove the infringement and fraud alleged. This they have not really attempted to do, and the Court has not before it to-day any more satisfactory means of determining this question, if material.

Complainants have not submitted any proof as to the ingredients either of their own, or of defendant's liqueur, but have on the contrary, barricaded themselves behind their alleged secret and refused even to whisper that secret in the ear of the Court.

Their position and its results are thus well described by the Court in *Hostetter vs. Hungerford et al.*, 97 F. R., 585:

> "No analysis is produced either of the genuine or the alleged bogus articles. It is the complainant's misfortune in a case of this character that the formula under which it manufactures, is a trade secret, and is therefore never produced; but where fraud is charged, the Court cannot close its eyes to the fact that the complainant has in its posses-

sion proof which will remove all doubt and withholds it for its own advantages."

Of course, if the Court is not advised of the character of complainants' own liqueur or of the liqueurs formerly made by them at the Grande Chartreuse, it cannot find as a fact that defendant's liqueur is, as alleged by complainants, a mere fraudulent imitation of complainants' liqueur, and not, as alleged by defendant, substantially identical. Not only have complainants declined to furnish the Court with the information primarily necessary for a finding on the question, but they have throughout their proofs insisted on treating their product as a trade secret, which they declined to disclose.

It is no answer to this reply that defendant's witnesses, following the example of those for complainants, have also treated defendant's product as a trade secret. The question is one as to which the burthen was upon the plaintiffs from the first —and they have not troubled themselves to shift that burthen.

Complainants cannot ask the Court to draw any inference adverse to defendant from a reticence of which they have themselves set the example. The case therefore went to final hearing with substantially no better proofs than those which left the Circuit Court of Appeals in doubt on this subject.

Defendant's principal does not pretend to be manufacturing under a formula or recipe derived from the Monks, but maintains by its witnesses, Lecouturier, Cusenier and Tieche, that it has by the inquiries and efforts of a skilled distiller and chemical assistants arrived at a formula which is believed to be in all essential particulars similar to that of the Monks, this result having

been arrived at by experiment and what is technically termed "tatonnement."

In bringing about this result, the liquidator, and his successor in business, have had the material advantages of the use of the old premises and fixtures, and of immediate access to the plants and herbs grown in the vicinity of La Grande Chartreuse, which have so long been and still are represented to the public by complainant as exclusively containing the essence of the particular qualities of Chartreuse liqueur, and they have had the exclusive privilege of gathering those plants and herbs upon those portions of the La Grande Chartreuse region constituting part of the state domain.

Cusenier, Qs22-30, p. 39 *et seq.;* Q52, *et seq.*, p. 43; Q110, XQ3, p. 51, *et seq.;* X28-33, p. 56, and RDQs1, 2, p. 58;

Lecouturier, Q57, *et seq.*, p. 129; Q81, *et seq.*, p. 135; Q16, *et seq.*, p. 1229; Q26, *et seq.*, p. 1230; Q65, *et seq.*, p. 1240; XQ86, *et seq.*, p. 1260;

Tieche, Q11, *et seq.*, p. 1035; Q18, *et seq.*, p. 1037.

In short, defendant's liqueur is made at the old factory with the old materials, out of the local herbs and plants giving the liqueur its particular qualities. Defendant by its use of the old marks is simply representing that this product of the old establishment, produced by the Monks' successors in the business there, is of the same general character as that formerly made in the establishment by the Monks themselves. And this

is being done by means and in a way which, under the circumstances, *so far from representing that the article sold by defendant is the Monks' product, is a direct statement to the contrary.* No one who reads the *Aubry Cusenier* circular put in evidence by complainant and the letter of M. Lecouturier therein referred to, can believe that the Monks are still manufacturing at the Grande Chartreuse.

The evidence is certainly overwhelmingly in our favor on the question whether our product has the same taste and flavor as that formerly made by the monks. Counsel for the complainants speaks in an ironical way of the emphatic declarations of the waiters of the "Café de la Paix," the first café in Paris, because "to such an indiscriminating clientele any inferior imitation would be acceptable." But it is respectfully submitted that in a matter of this kind the opinion of these Parisian "idlers" is entitled to much weight and that they are, perhaps, as good judges of the respective qualities of liqueur, as persons of more learned professions. Moreover, in addition to this testimony, we have the positive statements of the owners of the largest restaurants in Paris, who all testify that our liqueur, with the exception of the difference due to age, is entirely similar to the old liqueur of the monks, and that that made at present by the Monks is not (Delair, p. 92; Millon, p. 1087; Régli, p. 1114). Practically the only evidence in contradiction to this, introduced by the complainants, is the statement of some parties, formerly the agents of the Monks, who say that our liqueur is very bad, and that no one can mistake the one for the other, but who at the same time when asked to make a test, absolutely refuse because they are not in a condition to make such a "delicate" operation (Dubonnet, p. 25, fol. 98;

Brezun, p. 33, fol. 131). The restaurant keepers introduced by the complainants testify that the public refuses to drink the old liqueur made by the Monks, while in France, because, *after tasting it*, they think that it might be the liqueur made by the liquidator (Chelle, fol. 1341).

This certainly does not tend to prove that our product is an inferior imitation.

The main argument of the complainants on this branch of the case is that they possess a secret formula which is unknown to the defendant. They practically admit that the taste and flavor are the same and they say that they cannot prove by chemical analysis that the constituents are not the same. They must admit that we have access to the same alcohol and herbs as were used by them formerly, but, notwithstanding all this, they ask the Court to infer from the fact that the exact process is unknown to us, that necessarily the product must be different.

The best answer to this, admitting that there was a secret formula, is found in the testimony of one of the complainants' witnesses. It was attempted to prove through him that one was not authorized to conclude the identity of taste that the same ingredients were used. The witness was asked (p. 305, fol. 1217, Complainants' Case):

> "RDQ. Can it not be conceived, having regard to the great number of essences at disposal, that a given result may be obtained from the point of view of taste, by the help of different essences in different proportions in the manufacture of liqueurs in general?
>
> A. *It might be got at, but it would be an extraordinary chance.*"

Arguing from this, we may say that where, as is the case here, we have succeeded in getting the exact taste and flavor, it would be an extraordinary chance if we had not used the same ingredients and made the same product. Whether we do this using exactly all the little knacks and modes of procedure in use by the Monks is absolutely immaterial. The question is whether we have produced the same article. The formula of the Monks, if any such formula exists, dates from a time when science was in its infancy. Many things which they did in a crude and unscientific way may be obtained now through different and scientific means. A remarkable instance of this is found in the testimony of Father Baglin (fols. 702, 908 *e.*). When asked how he succeeds in obtaining a liqueur of the same strength every year, where the plants vary in strength of essence or aroma from year to year, he says that this is part of his secret. Yet the complainants themselves have attempted to prove by eminent scientists that at the present time it is perfectly feasible to obtain that result by scientific means (Sanglé Ferrière, fol. 1244, Compl. Case; Cugniasse, fol. 1298, p. 325).

If there ever was a secret it no longer exists. The decision of the Tribunal of Grenoble of the 18th of May, 1905, as quoted on page 567, recognizes that the value of any rights derived from the existence of any secret only "as long as the non-patented processes remain unknown."

The complainants claim in their brief and argument before the Circuit Court of Appeals, that the maxim applies here that the greater the resemblance the greater the injury and they have assigned as error the alleged refusal of the Court so to hold as a matter of law (Twelfth Assign-

ment, p. 1608). But they entirely misapprehend the object for which this testimony was offered and its bearing on the issue in this case. There is no doubt that where the complainant has proved that the word or mark used by him to designate his goods, has acquired a secondary meaning, denoting that they are of his manufacture, the fact that the defendants' goods, put up with this mark on them, are just as good as plaintiff's or identical with them, constitutes no defence. But here the very question is: Has the word "Chartreuse" acquired such a secondary meaning that it designates the product of the Monks and nothing else, or is the principal meaning which it conveys to the mind of the public the place of manufacture and the peculiar advantage that possesses for the manufacture of the liqueur? The fact that another manufacturer who is put in possession of such peculiar local advantages and is enabled to get the herbs and flowers, at the place where they grow, in the same manner the Monks did before him, succeeds for the first time in the history of the trade in producing a liqueur which is practically identical with the cordial formerly made by the Monks, has certainly a most important bearing on this point. It indicates that the quality and flavor of the liqueur is due, not to a peculiar process of manufacture, but to the peculiar qualities of the herbs and ingredients which can be found only in the place where the liqueur is manufactured.

We have assumed for the sake of argument that the Monks had some secret process or formula, but there is no adequate proof of this, although there is a good deal of asseveration on the subject by the complainant, Mr. Baglin, an interested witnesses, such as Dubonnet, Brezun, Riviere and Batjer, complainants' French and

other agents. The testimony of these agents proves nothing, except their zeal, for they do not pretend to speak from knowledge or save from hearsay derived from their principals.

As to the testimony of Mr. Baglin, his unsupported testimony should not be accepted, in view of the numerous contradictions it contained, some of which we have pointed out, and his admitted willingness to make statements he knows to be untrue, when assured by his counsel that they are necessary for his case. Other witnesses guess or opine that some secret is involved, but, of course, that goes for nothing. The statement that complainants themselves are at this time making identically the same liqueur of the same materials, and by the same recipe that is used at La Grande Chartreuse, is without a particle of adequate proof. Apart from the statements of Baglin, there is no testimony on the subject save that of one Villard, a herbalist of Grenoble, who testifies in substance that since the Monks have removed to Spain he has been gathering the same plants for them and sending them to Tarragona, but this certainly does not go far, especially in view of Villard's admission that he is not in the secret and that his observation of what occurred even at La Grande Chartreuse, as to the use to which the herbs were there put by the Monks, was most meagre, while it does not appear that he has ever been at Tarragona.

On this subject the Court is asked to *infer,* for complainants' benefit, from totally inadequate proof, but complainants have chosen to surround the whole subject with an air of mystery and uncertainty, and should abide the result. *Not a single witness connected with the proceedings at Tarragona and having personal knowledge there-*

of, has been called, not even the Procureur or Proctor of the Order, and who is supposed to be its business head. There are many obvious reasons why the present liqueur of the Monks should *not* be identical with their old liqueur; as, for example, the probable necessity of using Spanish instead of French brandy, and the deterioration which plants and herbs must undergo in being transported from La Grande Chartreuse or Grenoble to Tarragona, assuming them to be so transported. However, it is sufficient for our case that the alleged identity of complainants' present liqueur with their old liqueur, denied by the answer, has not been established by adequate proof.

IX.—As the product formerly manufactured by the Monks owed its reputation to its quality, due to certain advantages inseparably connected with the place of manufacture, defendant's principal, who, by decree of a competent French Court, has been directed and authorized to carry on such business at the identical place under similar conditions, and who, owing to the advantages so enjoyed by him, has succeeded in making the identical article, has the right to the goodwill attached to such business and to use the trade-name and labels connected with it.

If we are right in our contention that the liqueur made at the Grande Chartreuse owed its characteristic qualities to certain local advantages, it is not true, as held by the Circuit Court, that defendant's principal did not succeed to any

business and that the entire good-will, in this country at least, belongs to the Monks. In any case, as pointed out clearly by Judge Noyes (p. 1597, Record), the Monks having transferred their business to Father Rey before the appointment of a liquidator, cannot claim that they are not bound by the decision of a court in a suit to which the liquidator and Father Rey were parties, to the effect that such business belonged to the liquidator. He was not only put in possession of the Grande Chartreuse, but given the exclusive right of harvesting the plants growing there necessary for the manufacture of Chartreuse. Owing to these facts, he, for the first time, was enabled to make a liqueur of the same quality as was formerly made by the Monks who before him had enjoyed these advantages. It must not be forgotten that, according to complainants' own American witnesses, Chartreuse owed its popularity primarily to its quality, to its "exquisite melange of flavors" (Moore, p. 667, fol. 2664; Oertel, p. 662, fol. 2644; Nova, p. 654, fol. 2609).

The witness Elliott, called by complainants, is very emphatic on this point (p. 647, fols. 2583-2584):

> "RDQ. Do you attribute the quality of the article and the fact that thousands of bottles of it are consumed annually in this country wholly to the nature of the ingredients of the liqueur itself, or to the fact that it is made by the Monks under what you consider a secret process? A. *To the quality of the liqueur.*"

Under the circumstances hereinbefore detailed, we are entitled to the good-will arising from such quality and to use the trade-marks in connection with it. The words of Judge Taft, on deciding the "Benedictine" case, seems applicable here:

"Trade-marks containing no distinct assertion as to who the maker or seller is, associated with the article sometimes come to represent not the seller or manufacturer, but the place or process or quality of manufacture. This class may include cases where the name of the original manufacturer is the mark. In such case, so long as the place or process or quality of manufacture remains the same, the representation which the association between the article and the trade-mark makes to the public is true, no matter who the owner is" (36 Alb. L. J., 364).

That trade-marks or trade-names may be assigned with the business to which they appertain, and will go with an assignment of the good-will of that business, either voluntarily or by operation of law, is well established here.

Kidd vs. Johnson, 100 U. S., 617;
Menendez vs. Holt, 128 U. S., 514;
Chemical Co. vs. Meyer, 139 U. S., 547;
Warren vs. Thread Co., 134 Mass., 247.
Nervine Co. vs. Richmond, 159 U. S., 302.

In *Kidd vs. Johnson* this Court said:

"But when the trade-mark is affixed to articles manufactured at a particular establishment and acquires a special reputation in connection with the place of manufacture, and that establishment is transferred either by contract or operation of law to others, the right to the use of the trade-mark may be lawfully transferred with it. Its subsequent use by the person to whom the establishment is transferred is considered as *only indicating that the goods to which it is affixed are manufactured at the same place and are of the same character* as those to which the mark was attached by its original designer."

It is to be noted that the trade-mark involved in

this case was apparently of a peculiarly "personal" kind—"S. N. Pike's Magnolia Whiskey."

The good-will of a business *including the right to use trade-marks, even where these consist of the names of individuals engeged in the business,* and of a picture representing such name, pass with a transfer of all the property and assets of the business, although not specifically mentioned, and persons have no right to represent their business as the one formerly conducted by them, where *that* has been transferred with all its assets to other parties, although they have a right to do the same kind of business.

Fish Bros. Wagon Co. vs. Titus G. Fish et al., 82 Wisc., 546.

In that case plaintiffs claimed under a *receiver's sale.*

To the same effect see:

Sarrazin vs. W. R. Irby Segar & Tobacco Co., 93 F. R., 624;
Nervine Co. vs. Richmond, 159 U. S., 293.

The sale under a judicial decree of all the property of a manufacturing or commercial corporation, including "its franchises, name and goodwill," to a reorganization committee representing all its stockholders, passes to the purchasers and the reorganized company the right to the old company's trade-name, and to protection in its exclusive use to the same extent that such protection could have been invoked by the old company, had it continued in business. In this case the name sold was "Peck Bros." (C. C. A., 7th Cir.)

The Peck Bros. & Co. vs. Peck Bros., 113 Fed., 291, citing—
Kidd vs. Johnson (*supra*).

Brown Co. vs. Meyer (*supra*).
Nervine Co. vs. Richmond (*supra*).
Sarrazin vs. Irby (*supra*).
Le Page Co. vs. Russia Cement Co., 51 Fed., 941.

The correctness of the French judgments appointing defendant's principal are not open to question here.

We submit that the French judgments concerned are of the nature of a judgment *in rem*.

Black on Judgments (2nd Ed.), Sec. 79;
Windsor vs. McVeigh, 93 U. S., 274;
Kreiss vs. Faron, 118 Cal., 142;
Whitney vs. Walsh, 1 Cush., 29.

When a Court of competent jurisdiction and by proceedings directed specifically against things within its jurisdiction, acts on such things, its judgment, if the procedure be regular, is everywhere binding.

Wharton, Conflict of Laws (3rd Ed.) 665, 666;
Castrique vs. Imrie, L. R. 4 H. L., 428;
Magoun vs. New Eng. Co., 1 Story, 157.
Peters vs. Warren Ins. Co., 14 Pet., 99;
Hudson vs. Guestier, 4 Cranch, 293;
Williams vs. Armroyd, 7 Cranch, 423;
Whitney vs. Walsh, 1 Cush., 29;
Black, Judgments, Sec. 813;
Monroe vs. Douglas, 4 Sandf. Ch., 126, 183;
Hilton vs. Guyot, 159 U. S. 167.

Such a judgment is conclusive throughout the world; at any rate to the extent that our Courts will not question the correctness of the legal proceeding upon which the judgment was based.

These French Judgments necessarily involved a finding that the business and good-will were such as under the French law was subject to seizure, and the question whether under our law there would be the same holding, is not open, because the French court was acting upon property there.

This Court cannot enter into an injuiry as to whether the French courts proceeded correctly as to their own law.

> Black, Judgments, 5819;
> *Castrique vs. Imrie*, L. R. 4 H. L., 428;
> *Williams vs. Armroyd*, 7 Cranch, 423.

Defendant's principal, as we have already pointed out, occupies a position entirely different from the ordinary defendant to an infringement suit. Where a manufacturer, who can choose any label he wants, deliberately makes use of a label identical with or closely resembling the label of another manufacturer, the fact of his so doing is in itself strong evidence of his intention to deceive the public. But here we represent a public officer who is authorized and directed by a competent tribunal, in an action to which these complainants are parties, to make use of this particular label. The complainants have tried to show that they have attempted to make the label used by him resemble the label of the Monks as closely as possible and that the only difference is the name of the printer, due to the refusal of the old printer to make them. We admit the charge and state that that was exactly what he was ordered to do and that he would have stultified himself had he acted otherwise.

The complainants admit by their conduct that they would not have the right to use the old label without a sub-label indicating that the place of

manufacture is no longer at the Grande Chartreuse (Baglin, p. 256, fol. 1023).

> "RDQ27. Does Father Schmid allow his customers to believe that the liqueur is still manufactured at the Grande Chartreuse? A. No.
>
> "RDQ28. By what means does he prevent *the public being deceived?* A. By a counter label.
>
> "RDQ29. How is this counter-label worded? A. 'At present manufactured at Tarragona by the Carthusian Fathers.'"

This is a clear admission that the place of fabrication is an important element. Even, therefore, if the Court should hold that part of the good-will in the United States was still due to the fact that the Monks were manufacturers, it certainly should allow us, who have succeeded to that part of the good-will incident to the place of manufacture, to use the labels with a counter-label indicating that the article was not manufactured by them.

But, as we will attempt to show in our next point, there exists no necessity at the present time for us to use a sub-label for the purposes of preventing deception.

X.—Even if the word "Chartreuse" and the labels ever had the secondary meaning claimed by the complainants, the evidence in this case shows that they have lost such meaning, and that both the word "Chartreuse" and the labels indicate to the American public exclusively the article manufactured by the defendant's principal.

Complainants have elected to try to prove their case by the testimony of a number of dealers or

purveyors of liquors here and abroad, and this testimony shows that these persons are, and have been from the first, familiar with the removal of complainants from La Grande Chartreuse, of their adoption thereupon of the new marks and labels, and with the character of the latter.

We refer again to the fact that immediately upon making their contract with Union Agricola in Tarragona, complainants not only abondoned the old labels and adopted new, but at that time and ever since, have given the widest publicity by advertising and otherwise, to the new label, and to the statement that *it alone is a guarantee of their product.*

Under such circumstances, the burden upon complainants was extraordinarily heavy to show, if they could, some case or cases in which defendant's use of the old marks had actually misled someone, or a state of facts from which such deceit would be the only possible inference. If the proofs leave any doubt upon this question, defendant must prevail.

> *Hildreth vs. McDonald*, 164 Mass., 16;
> *Singer Co. vs. Wilson*, 2 Ch. D., 447;
> *Van Camp Co. vs. Cruikshanks Co.*, 90 F. R., 814;
> *Von Muenser vs. Wittenran*, 85 F. R., 966; 91 F. R., 126.

But with this burden upon them, complainants have failed to prove a single instance of actual deceit; they have failed to produce a single *consumer* to prove either deceit or the probability of deceit, but on the other hand they have called a number of dealers and purveyors of liqueurs, many of them, such as DuBonnet, Brezun, Riviere, Turner, Pheysey, Humphrey, Cunningham, Batjer and

Nova, more or less directly connected and interested with themselves, and by these witnesses they have proved a state of facts which, we submit, completely negatives any charge of unfair competition. It is shown by complainants' own witnesses, and by those for defendant, that, as a matter of fact, the removal of the Monks from France and their establishment of a new liqueur manufactory in Spain, is, and long has been, a matter of world-wide notoriety among dealers and purveyors in Chartreuse. See for example, among plaintiff's foreign witnesses, DuBonnet, pp. 16-17; Brezun, p. 28; Riviere, p. 60; Pillard, pp. 87-89; Chelle, pp. 331-334; Cornuchet, pp. 341-342; Turner, p. 582; Pheysey, p. 593; Humphreys, p. 601; Cunningham, p. 604; Restell, p. 617; Masters, p. 624; and Davis, p. 631.

And among complainants' American witnesses, see: Elliott, pp. 643-646; Haan, p. 648; Hirschfield, p. 650; Callahan, p. 659; Dunwoody, p. 666; Moore, p. 667; Badenoch, p. 671; Darling, p.673.

For defendant's testimony to the same effect, see among the foreign witnesses: Haase, pp. 843-844; Boutin, p. 851; Galerand, pp. 855-856; Braquessac, pp. 861-862; Garratt, 864-865; Delair, pp. 892-893; Mumford, pp. 992-993; Willis, pp. 1000-1001; Grant, p. 1006; Moore, p. 1008; Barker, 1017-1018; Regli, p. 1101.

And among defendant's American witnesses: Mundel, p. 1281; Chauvelot, p. 1284; Orteig, p. 1287; Pierce, p. 1310; Medary, p. 1317.

This body of testimony establishes beyond controversy: that the results which might have been expected from complainants' own conduct, have, in fact, followed therefrom in this country and elsewhere, and that to-day there is no one—certainly not among the classes represented by the

witnesses—who could, by any possibility, from the marks and labels used by defendant, mistake defendant's liqueur as and for that which complainants are now manufacturing and selling.

The complainants contended that they never abandoned the use of their mark and they point to the fact that they sold four cases since their expulsion from France, bearing the old label with the addition that the article was made in Tarragona and not in France. If the claims that the trade-mark "Chartreuse" and the labels in question no longer designate in the minds of the public the product of the complainants, were based on the mere fact of non-usage of the label, such evidence might be of some importance as showing that it was not the intention of the complainants to abandon their rights. But such is not our claim. We claim that the complainants, by their affirmative acts, have tried both in France and in this country to disassociate their manufacture from the labels formerly used by them, to indicate to the public that such labels no longer designated their product, that they have done this by advertising, by adopting an entirely new label and name, by placing on their bottles the caution that the present label was the sole guarantee of the genuineness of the liqueur, and by other means. We claim that the evidence shows that they have succeeded in such efforts and that whatever favor the product of the defendant may find among the public is based on its own merits and, of course, on the fact that it is made under circumstances and under conditions which contributed formerly to the renown of the liqueur made by the Monks.

In the opinion of the Circuit Court, it is stated that even though the Monks had abandoned the old name and label, the use of such name and label

by another manufacturer might still constitute unfair competition. This is undoubtedly so where, notwithstanding such abondonment, the label still indicates to the public that the goods are the manufacture of the person who formerly used such label. But both the trade-mark and the claim to protection against so-called unfair competition are lost when that belief no longer exists. There is no longer a trade-mark because the name and label no longer indicate origin or ownership. There is no unfair competition by the use of a label by another person, because such use does not tend to deceive the public. Even mere laches has been held sufficient to defeat a claim to exclusive ownership where, owing to such laches, the name or label had ceased to designate to the public the manufacture of the complainant. (*Saxlehner vs. Eisner*, Mendelson, 179 U. S., 665; *French Republic vs. Saratoga Vichy Co.*, 191 U. S., 427.) But here we have much more than laches. The complainants *intentionally and deliberately set out to obtain that very result, and they succeeded.*

Even without reference to defendant's witnesses upon this point our position is conclusively established by complainants' witnesses.

Their witness, Julien Chelle, when asked what instructions he had given as to serving the various liqueurs in his establishment, answered as follows (p. 337, fol. 1347):

> "When Chartreuse is asked for, for instance—it is the word that is generally used in our establishments—the staff should ask: 'Do you want Chartreuse of the *liquidator, do you want liqueur of the Carthusian* Fathers?' *They do not say 'Chartreuse' and I will tell you why, we should be wrong if Chartreuse were asked for and we served that of the Carthusian Fathers.* But as it is

at my place, the staff should ask: 'Do you want liqueur of the Carthusian Fathers' or 'chartreuse of the liquidator?' "

The witness Cornuchet, the owner of such well-known establishments as Maxim's and the Ambassadeurs, testifies to the same effect and says, when asked what would be the effect of serving the Tarragona liqueur to one who asked for Chartreuse (p. 346, fol. 1384):

> *"You will have been deceived, since it belongs—the Chartreuse belongs to the liquidator, and if I serve you a glass of liqueur of Tarragona for Chartreuse you will have been deceived."*

In view of the fact that the consumers of liqueur like Chartreuse generally belongs to a class which are familiar with what has happened in recent years in France, it might be expected that the same state of affairs should exist in this country, and complainants' witnesses prove this to be the fact.

The witness Haan testifies that since the Monks went to Spain, his firm received no Chartreuse made by the Monks prior to their expulsion (p. 648, fol. 2587, complainants' case). The following question was then put:

> "XQ7. And since they stopped making in France and went to Spain you have been handling Liqueur Pères Chartreux under the label Complainants' New Label? A. We did handle some of the Cusenier Co. Chartreuse, but the public refused it. We have been handling this Pères Chartreux furnished by Batjer & Co."

W. G. Moore, called by complainants, on his redirect-examination, testifies (fol. 2672):

> "RDQ18. Who do you understand are the general sale agents in the United States for

Chartreuse? A. *Do you mean Chartreuse or Pères Chartreux?*

"RDQ19. I mean both. A. Well, I understand that the Chartreuse has been denied importation into the United States. Batjer & Co. are the agents for Liqueur Pères Chartreux."

The witnesses Elliott (p. 647, fol. 2582), Hirschfeld (p. 651, fol. 2600), Callahan (p. 660, fol. 2634), Badenoch (p. 671, fol. 2680, and Darling (p. 674, fol. 2691), called by complainants, all testify that if they wanted to be sure that the liqueur was made by the Monks they would require the New Label.

The witness Elliott (p. 647, fol. 2582) was asked the question:

"RDQ30. If you should order from Batjer & Co. a case of goods and receive a case of bottles showing labels similar to Complainants' Exhibit Chartreuse sold by Batjer & Co., would you not believe it was the Chartreuse of the Monks? A. Had it Batjer & Co. on the Label, the old exhibit, would judge it was an old lot of liqueur in this country manufactured by the Monks in France."

The same question was asked the witnesses Callahan (p. 661, fol. 1637), Oertel (p. 664, fol. 2650), Dunwoody (p. 666, fol. 2660), Moore (p. 670, fol. 2673), Badenoch (p. 672, fol. 2682), Darling (p. 675, fol. 2695). Some of them answered that they would do so if the label had the name of Batjer & Co. on it, showing clearly that defendant's label would not be an indication to them that the contents had been made by the Monks, but that they relied exclusively on the fact that "Batjer & Co." had always been the agents of the Monks. This is stated in so many words by the witness Badenoch. In answer to the question he says (p. 672, fol. 2682):

"Not without questioning Batjer & Co. as to the genuineness of the article. I would want this assurance in view of the new label that has come out. I would accept the goods if Batjer & Co. assured me that they were the genuine product of the Monks."

Still more positive is the witness Darling (p. 675, fol. 2694):

"RDQ20. If you should order from Messrs. Batjer & Co. a case of liquer manufactured by the Monks, and this order should be filled by sending you bottles similiar to this one (Chartreuse sold by Batjer & Co.) would you accept it as being the genuine liqueur? A. Not at the present time, I wouldn't. I want to correct myself, this is a very old bottle, and I suppose that was the goods sold by Batjer & Co. before the Monks were driven out.

"RDQ21. Therefore, would you or would you not accept it? A. No, I would not."

How can it be said that by this testimony the plaintiffs have proved what was incumbent upon them to prove, viz.: that the old name and label indicate that the goods are of their manufacture?

Their claim that the words "Pères Chartreux" used by them are equivalent to the use of the word "Chartreuse" is amusing in view of the position taken by them, when sued in France by the liquidator for an alleged infringment of the trade-mark "Chartreuse" by the use of the words "Pères Chartreux." They then denied that there was any similarity between the words and won their suit on that ground (pp. 701-717).

As we noted before, from our standpoint, it is completely immaterial whether or not, as testified by complainants' agent, Nova, there was a delivery of four cases under the old label. It is, however,

interesting that the witness, who has testified, that both were offered all the time (p. 656, fol. 2619), and that they are in a position to fill orders with the old label (p. 658, fol. 2628), finally confessed that the only sale he made of goods bearing the old label, were these four out of several thousand cases. Certainly this is strong testimony to the fact that the public when they wanted liqueur made by the Monks required the "Pères Chartreux" label and that the old label did not indicate to them any longer that the liqueur was made by the Monks.

As the liqueur in the four cases shipped since 1903 was made at Tarragona (p. 658, fol. 2626) and no other shipment bearing the old label was testified to by anyone, we may take for granted that at the present time there is not on the American market any appreciable quantity of "Chartreuse" made by the Monks prior to their expulsion from France.

The Court of Appeals in its opinion recognizes that

> "the proof of actual deception is exceedingly "unsatisfactory. The facts regarding the "migration of the monks to Tarragona and "their adoption of entirely new labels is so "well known that no one connected with the "trade could be deceived.
>
> "The consumer might be but the assertions "that he has been depends more upon pre-"sumption than fact (p. 1588 of Record)."

Acting on such presumption that a purchaser might be deceived, the court enjoined us from using the labels in question, although there was "inadequate proof of deception." (p. 1588).

In this, we respectfully submit, the Court erred. We will admit, for argument sake, that proof of actual deception was not necessary and

that complainants in the first instance on this point might have based their case upon the similarity of the labels.

But, as we have pointed out, *they themselves have rebutted this presumption and proved by their own witnesses, that the public no longer considers that the old labels indicate the product of the monks.* Having elected not to rest their case on such presumption, and having produced witness who expressly stated that the contrary was their understanding, and that the use of the old label could not deceive them, they cannot claim that as to the rest of the public the presumption still remains.

The proceedings instituted against this defendant after the decree of the Circuit Court of Appeals was entered, conclusively prove that, according to the complainants themselves, the old labels no longer indicate to the public the goods manufactured by the monks.

These proceedings which the complainant seeks to have reviewed by this Court are in substance, as follows:

Permission having been granted to it by the Circuit Court of Appeals to make use in any language, of the label set out in the opinion, the defendant used a label practically exactly similar to the one set out in the opinion, with the exception that it used the words "Pères Chartreux" instead of the words "Carthusian Monks." The Court will notice that in the bill and decree itself the complainants have used as interchangeable words "Peres Chartreux" and "Carthusian Monks," and in the decree (p. 1567) called themselves Carthusian monks, adding in parenthesis "Pères Chartreux."

An order to show cause was obtained entitled

in this suit why defendant should not be enjoined from using the words "Péres Chartreux;" On the argument it was practically conceded, and it was so held by the Court, that the form of the motion was objectionable because the Court had no power to add to a decree on appeal to this Court, and by consent it was treated as an application to punish for contempt. The Circuit Court imposed a fine but on appeal from said decision, the Circuit Court of Appeals reversed the decision on the ground that the defendant had only done what it had been expressly given the right to do by an order of the court and that no mistranslation had been proved.

It was claimed that the violation of the injunction order was of that part which prohibited the defendant "from making use of the good-will and reputation of the complainant" and that the use of the words "Peres Chartreux," was such an attempt to make use of such goodwill.

In support of this allegation it was stated in the affidavit on which the order to show cause was obtained that, after the Carthusian Monks were expelled from France and set up their establishment in Tarragona

> "they adopted a new label (which has since gained great notoriety and favor), the prominent words thereon being 'Pères Chartreux'. In the brief of complainant it was stated, that *the purchasing public has now been taught at great expense to complainant that the liqueur fabricated by the Carthusians according to their ancient secret formula, are marketed in bottles bearing conspicuously the words 'Pères Chartreux.'*"

Complainants having thus expressly stated that

the good-will and reputation is at the present time identified with the words "Pères Chartreux" on the new label, they cannot claim that at the same time it is still based on the old labels and the old designation, and that the use of any such word would tend to deceive the public.

Reference has been made to certain letters received by Batjer & Co.

The letters here referred to have been in evidence by complainants in connection with the testimony of Henry Batjer (p. 638) to show that prior to the institution of this suit he (Batjer) had suffered injury from the circular letter "Complainants' Exhibit Aubry-Cusenier Letter."

It is very possible that the Aubry-Cusenier circular caused complainants some trouble and perhaps made them lose customers. This is the result of all competition, and does not indicate that such competition was unfair. Mr. Nova testifies (p. 653, fol. 2608) that those who were disturbed ordered from him when they were told that he represented the goods made by the Monks.

The writers of these letters do not testify, and the circumstances under which they were written appear only by inference. They certainly are not relevant as showing that the writers were misled or deceived by defendant's use of the old marks, which is the question here, but only that they were disturbed by the rather aggressive claims set up in the Aubry-Cusenier letter, and naturally wrote to the house of Batjer & Company on the subject. These letters might be material if the issue here were as to the effect of threatening letters, but that is not the issue, and they certainly have no relevancy to the actual issue as to whether defendant's use of the disputed marks, under the facts of the case, con-

stitute a violation of complainants' trade-mark or unfair competition.

Furthermore, it will be observed that these letters refer to occurrences of more than three years ago and that during those three years there has been a material change of conditions. However, the main point is that the letters contain nothing material or relevant to the actual issue in the case.

Some stress has also been laid on the testimony of Mr. Haan that he made a purchase of some Chartreuse sold by Cusenier and that at the time he was under the impression that he was buying liqueur made by the Monks (p. 649). He rather weakened on this point when placed on the stand by defendant and is only kept in line by repeated questions of complainants' counsel (p. 1276, Defendant's case). But, anyhow, as he admits (p. 1276) that at the time he had seen the Aubry-Cusenier circular which expressly refers to the letters of Mr. Lecouturier stating that the liqueur is made by the liquidator, and, as he also testifies, that no statement was made to him that the liqueur was made by the Monks (p. 1275), we fail to see how his mistake, if it really existed, can be laid at our door.

Moreover, while the recollection of Mr. Haan as to material facts is very hazy, the salesman Dresdner, who made the sale to him, positively testifies that he fully explained the situation to him (pp. 1302-1304). That his recollection is correct is sufficiently evidenced by the fact agreed to by both that Dresdner told him at the time that his principal would take the liqueur back if there was any trouble (Haan, Q. 4, 1275, and Dresdner, Q. 12, p. 1302), and that when Haan did return the liqueur he did so with a letter in evidence as Defendant's Exhibit Haan's Letter,

and which gives Mr. Haan's sole reason for returning the liqueur that he had been served with an order of injunction.

If Dresdner told him that the Chartreuse was in all respects the equal of the one formerly manufactured, he only did what, as we have tried to show, he had a perfect right to do.

XI. — The provisions of our trade-mark treaties and our own existing registration statute support defendant's contention here.

In 1869 the United States concluded with France a treaty by which the owners of trade-marks in one country should have protection of those marks in the other country (16 Stat. L., 771). That the basis of such protection is the ownership in the country of orgin is shown by Art. 10, which provides that if the mark falls into the public domain in the country of origin it *ipso facto* falls into the public domain in the other country. By the International Convention for the Protection of Industrial Property, signed at Paris, March 20, 1883, registration of trade-marks of foreigners is made to depend not upon use in the country where registration is sought, but entirely upon *ownership in the country of origin.* See Art. 6, p. 799, Hopkins on Trade-marks.

The Federal Trade-mark law enacted in this country February 20, 1905, and now in force (33 Stat. L., 724) and designed to give effect here to the International Convention, provides that foreigners may register their trade-marks here only provided their own country grants reciprocal rights to our citizens, and it is specifically provided that in the case of such foreigners it shall not be necessary that the mark shall have been used in this country (Sec. 2).

Of course as the trade-marks here in suit have not been registered under the Act of 1905, said act has no applicability here and is referred to only as evidence of the general policy of our law on the subject of trade-marks, and the view which it takes of the nature of trade-mark right.

It will be seen that according to the policy of our statute, trademarks of foreign business houses are protected here not upon any theory of an-independent good-will based upon use in this country, *but as part and parcel of the foreign business, to which protection will be given in this country as a matter of reciprocity.* In other words, the whole basis of protection here under the statute, in the case of a trade-mark of foreign origin is the ownership abroad, and when ownership abroad fails, the right here goes with it.

This is entirely in line with the fundamental principle of our common law on the subject, *i. e., a trade-mark right exists only as incidental to a business.*

XII.—As to sundry French and other judgments put in evidence for complainants.

Complainants (as also defendant) have offered in evidence a judgment of the Court of First Instance of Grenoble of May 18, 1905, "Complainants' Exhibit S," in a suit brought by the liquidator against certain parties apparently handling complainants' goods in France, and in which the Court decided against the liquidator's claim that complainant's *new* marks, and their use, were an infringement of the old marks held by the liquidator, an "usurpation of name," or a "counterfeit or fraudulent imitation," and refused to decide the question of "unfair or illicit competition" as not

within the Court's jurisdiction. Of course, this judgment, as to its results would constitute evidence of expert opinion *against complainants* in this case, as to the question of similarity of the marks and labels used by defendant, to complainants' *present* mark and labels or as to the probability of one being taken for the other, were those questions here in issue. But the particular use which complainants propose to make of this decision is, apparently, to urge it as a "finding of fact" that complainants had taken away with them to Spain, the secret of manufacture of the liqueur, and it is even suggested in the proofs that this supposed finding makes the matter *res judicata* as against the liquidator or as against this defendant, claiming under him.

To this proposition it would seem to be a sufficient answer that the supposed finding of fact is on the face of it a mere recital, a "statement of reason" not essential to the judgment, and in no proper sense part of it. Furthermore, such a recital of collateral or incidental alleged fact in a foreign judgment, the record, upon which the recital is based, not appearing, certainly does not constitute *res judicata* in our Courts for the purposes of this or any other proceeding.

Complainants have also produced as their Exhibit No. 22, a judgment of the Court of Appeals of Grenoble of December 12, 1905, reversing, on Rey's appeal, an order previously granted by a Judge of the Court below, on the application of the Liquidator, and authorizing the latter to apply for the transfer to him, or registration in his name, of the disputed marks in foreign countries. As the ground of this decision is obviously simply that the Judge of Urgency of the lower tribunal was incompetent to grant such an order in view of the then pending appeal from the main action between Rey and the Liquidator, the materiality of this it not seen.

Still another French judgment figures as Complainants' Exhibit 23 (p. 732), being the judgment of the Court of Appeals of Grenoble of March 27, 1906, refusing the Liquidator's request, that the Court should state and declare, by way of *interpreting* its former decree of July 19, 1905, that the assets of the liquidation of the Chartreux comprised the trade-marks filed in foreign countries. The Court declined to receive the Liquidator's application, simply on the ground that the question involved had not been discussed or passed upon in the decision, interpretation of which was sought.

Complainant will argue, no doubt, that this showed that the French Court did not assume direct jurisdiction of the trade-marks abroad, but left that to be decided in the tribunals of the several countries in which it might arise. If that be conceded, it is not material. Defendant's contention is *not* that the French judgments under which its principal claims, expressly, and directly settled the status of the marks abroad, but that the said judgments were effective to vest in the defendant the business and good-will inseparably connected both in France and in this country with the place and mode of fabrication and, therefore, gave him the right, in virtue of the principles of our law, to use the trade-mark connected therewith.

The complainants have also offered in evidence certified copies of judgments rendered by certain courts in Switzerland, in Buenos Ayres and in Brazil, upon cases involving to some extent the rights of the respective parties to the case at bar in the several countries named. The judgments referred to are printed respectively at pages 809, 804 and 828 of the record.

In Switzerland it appears that a criminal action was instituted by Rey against certain importers dealing in the product of Lecoutourier, the Liqui-

dator, charging an infringement of the trade-mark rights claimed by Rey. The Court of First Instance dismissed the complaint on the ground that a case of fraud had not been made out. On appeal to the Swiss Federal Tribunal the action of the lower court was reversed on the ground that the French judgment in favor of Lecoutourier was not necessarily a good defense to the charge of infringement under the circumstances of the case, for the reason (1) *that the trade-marks having been registered in Switzerland in the name of Rey*, a foreign judgment could not *of itself* effect a transfer of those trade-marks to Lecoutourier, and as it was necessary under the Swiss statute that a change of ownership in a registered trade-mark should be duly noted in the Register of trade-marks and published in accordance with certain forms. (2) That the French judgment relied on by Lecoutourier was at that time the subject of an appeal not yet determined, and furthermore that the effect of the French judgment in any case was not *necessarily* to deprive Rey of his rights in a trade-mark *duly registered* in Switzerland.

In Buenos Ayres, it seems that Lecoutourier sought an execution of the French judgment which was opposed by Rey, and the judgment of the Court (which appears to have been one of first instance) is to the effect that the French judgment could not be followed in Buenos Ayres because it would deprive Rey of the rights legitimately acquired under the constitution and laws of Buenos Ayres, *through registration of the mark*, which would be a curtailment of the national sovereignty.

In Brazil, Lecoutourier caused the trade-marks to be registered in his name as Receiver, and Rey petitioned a cancellation on the ground that the registration of Lecoutourier was an attempt to seize

the marks *previously registered by Rey in* 1892. The Court (also one of first instance) decreed the annulment of Lecoutourier's registration on the ground that so far as the Register showed Rey had priority; that a transfer to Lecoutourier, to be effective, must be noted upon the Register in proper form, and that the French judgment could not have the effect of annulling Rey's rights guaranteed by the Brazilian law *as acquired by prior registration*, for the reason that extra-territorial effect would thereby be given to the French judgment, clashing with the rights of territorial sovereignty.

It will be seen that in each of these cases, the decision was based upon the peculiarities of the trade-mark law under which the action was brought. Each Court held that by registration of the trade-mark, rights of property were acquired by the registrant, which rights were guaranteed by the constitution and laws of the country in question, and which therefore might not necessarily be affected by a judgment rendered in France. Assuming that these judgments could in any case be given any effect in the case at bar, arising upon the conditions in this country as distinguished from those in other countries, it is clear, we submit, that the grounds of the several decisions are entirely lacking here. As has already been pointed out, there can be no property *in this country* in a trade-mark independently of the business in which the trade-mark has been adopted and used. Registration confers here no right of property whatever upon the registrant. It simply constitutes a record of the registrant's *claim* to ownership. Under these circumstances, the principles upon which the Courts in Switzerland, in Buenos Ayres and in Brazil base their decisions are without any application whatever and throw no light upon the controversy here.

The complainants labor throughout to construe the French judgments of April 23, 1904, and July 19, 1905, as covering the trade-marks only. The terms of those judgments are an explicit contradiction of that theory. The liquidator was appointed by those judgments to take charge and care of the business, and to maintain and administer it, that is to say, to carry on if in his judgment that was necessary for the conservation of it.

If the liquidator did not acquire the business which the Monks had carried on there, it was because they deliberately disobeyed the decree of the Court in an action to which they were parties, which put the business and plant into the liquidator's hands. Complainants contend that even the plant or installation had disappeared when the liquidator got possession. Complainants are not at liberty to suggest that they disobeyed the mandate of the Court.

The judgment of April 23, 1904, was affirmed by the Appellate Court (judgment of Court of Appeals, Grenoble, July 19, 1905, at p. 1324, and judgments of the Court of Cassation, p. 1411).

Even if any doubt could be said to have originally existed as to the real meaning and extent of the authority given by the French judgments, such doubt has been solved both by the practical construction given to such judgments and by the latest decision of the Court of Appeals of Grenoble of the 5th October, 1908, on the subject. This decision was rendered after the trial of the case, but a certified copy was handed up on the argument before the Circuit Court of Appeals. A translation is annexed hereto and marked Appendix A. How the judgments were construed in practice was shown by the fact that in 1906, a judicial sale was had of

all the business, trade-marks and good-will formerly held for the account of the congregation of the Carthusians, and that the Société Fermiére acquired such business, good-will and trade-marks on the payment of a large sum of money.

The decision of the 5th of February, 1908, (Appendix A), sets every doubt on the extent of the authority so conferred on the Société Fermière at rest. The account was a result of the decision of the 18th day of May, 1905, by which the attachment levied by Lecoutourier on certain merchandise consigned to Dubonnet, representing the manufacturers of the Tarragona liqueur, was held to be unlawful. Dubonnet brought an action against Lecoutourier for damages suffered by such unlawful attachment and Lecoutourier put in a counterclaim for damages caused to him by other acts of Dubonnet.

The Compagnie Fermière had intervened in the case and it was held by the Appellate Court that it had the right to do so, because at the judicial sale it had acquired the business including the good-will and trade-marks of the Congregation of the Carthusians. It asked to have the Court decide that it had acquired the exclusive right to the trade-marks and to the business formerly belonging to the Carthusians. The Appellate Court held that it was incompetent to incorporate this point in the judgment on the ground that it was not embraced in the pleadings, and further stated that such decision was superfluous, as the greater part of the questions which it was sought to have the Court decide

> "do not seem susceptible of becoming the sub-
> "ject of litigation as they have been decided
> "by final judicial decisions especially the
> "acquiring of the exclusive ownership first
> "by the liquidator and, thereafter by the Com-
> "pagnie Fermière, who purchased at judicial

> "sale the trade-marks registered for the bene-
> "fit of the congregation of the Carthusians
> "and the intimate and necessary connection
> "of the product made by the company with
> "the said trade-marks."

This decision is also important from another point of view. Complainant has laid great stress on the statement contained in the decision of the Court of first instance of Grenoble (of the 10th of May, 1905), that by reason of the proceedings in France the trade-marks had become separated from the product of which up to that time it had guaranteed the manufacture of the origin.

Lord Shaw also cites this statement in his opinion of the House of Lords, as one of the grounds of his concurrence in the affirmance of the judgment below. It does not seem to have been brought to the attention of the noble lord that the Court of Appeals expressly annuls and quashed this finding in the following words:

> "It is an observation not connected with
> "the pleadings of the parties or the points
> "decided, has no resemblance, close or far,
> "to *res adjudicata*, and that nothing allows,
> "especially after this judgment which annuls
> "it, to make it appear as a decision or the
> "judicial appreciation of the composition or
> "the comparative value of the liqueurs in
> "question."

After the case had been argued below, complainants submitted to the Court a decision of the Supreme Court of Leipzic, affirming a judgment which reversed the Hamburg judgment which denied the rights of complainants, and which judgment is printed on page 1459 of the Record.

We presume that a copy of such judgment of the Supreme Court of Leipzic will be handed up to the Court on the argument.

The Hamburg judgment was based on the contention which we make here. It held that in the first place, the French Statute of the Congregation was not a law of exception, and even if it was, and the property of the Congregation situated outside of France which had an independent existence did not thereby come under the Receivership, the German trade-marks would come under it, because they were property which cannot be separated from the property situated in France and has no independent existence.

The decision of the Supreme Court of Leipzic reversing said judgment is based entirely on the statutory law of Germany. It clearly appears that the decision was based on the fact that the right was created by the registration of he trade-mark in question in Germany on behalf of the Monks, and that, as the statute creating such right, also expressly provides in what mode it can be transferred, the only question before the Court was whether the plaintiff's claim fell under the provisions of the statute. Article 7 of the German Trade-mark Law can be found on page 145 of Vol. 71 of the United States Patent Office Gazette. The part of such article relating to this matter reads as follows:

> "The rights resulting from the declaration or registry of a merchandise mark pass by inheritance and can be transmitted to other persons by testamentary disposition. They cannot, however, pass to other but with the business to which the mark appertains. The transfer shall be entered on the roll of marks at the instance of the successor, provided the assent of the original owner is satisfactorily established."

All that is held by the Leipzic Court is that a transfer against the will of the owner of record

is not such a one as is contemplated by this section. It never was disputed that the question whether the right to the marks was transferred to plaintiff is dependent on the German Statutory law. (See Hamburg decision, p. 1469, fol. 1900 Record). The Hamburg Court held that the transfer of the business was in itself a compliance with Article 7, (fol. 1900, p. 1469) and this view is disapproved of by the Court on appeal. We call the attention of the Court to the fact that a careful inspection of the decision will show, insofar as its meaning can be deciphered from the very unsatisfactory translation submitted, that the Leipzic Supreme Court considers itself bound by the decision of the Court of Appeals below, that the French law of 1901 constituted a legal confiscation. It states that this is a question of fact established by the interpretation of the French law, and that the correctness of such interpretation cannot be examined by the Supreme Court. The only point which it holds is before it (and even that with some hesitation) is whether. it having been found as a fact by the Court below that such law is a law of confiscation, the conclusion, that the transfer in virtue of that law is not covered by the German Statute, is correct. If the Court should deem the point material, we again insist that in no sense can the law in question be called a law of confiscation, on the ground that it clearly appears that the Monks, being at all times an unauthorized order, never had any legal property in the trade-marks, and that whatever right they exercised was merely in virtue of a toleration, which was absolutely illegal and could at any time be withdrawn. Even if the law of 1901 had provided that the net proceeds of the liquidation of an unauthorized order should be paid over to

the State, it would be as little confiscation as it would be here to sequester real property over which an alien had been allowed to exercise certain rights by writ of office found.

In the German case the entire burden was on the liquidator; in the case at bar, it is on the Monks. Not only is the decision of the German Court no authority in favor of the position adopted by the complainants here, but there is a very strong intimation contained in it that the loss of the trade-mark in the country of origin would prevent the owners of record from bringing an action as plaintiffs. We call the attention of the Court to that part of the opinion which refers to the provision of the law, to the effect that the establishment of rights in Germany is dependent upon the condition that the mark was admitted to protection in the country of origin. This provision is contained in Section 23 of the German Trade-mark Law.

A reference to the cases cited in the opinion of the German Court will show that the unquestioned doctrine is, that an action cannot be maintained where the trade-mark, either has not been admitted to protection in the State of origin, or for some reason, has lost such right to protection.

In Vol. 46, p. 120, Entscheidungen der Reichsgerichte (*Liebig's Extract* case), the Court holds that where a trade-mark; has become public property in the country of orign, the rights acquired by registration in Germany are *ipso facto* lost. The Court says, (p. 129):

> "There is for the foreigner no German mark which is independently protected but only his foreign mark which he brings to Germany that he may be protected there."

The doctrine is well expressed in the decision of the German Imperial Court (Vol. 51, p. 267, Entscheidungen der Reichsgerichte):

> "A trade-mark right is not a right locally restricted, locally divisible * * *. The right recognized in various countries, to one and the same trade-mark, of one and the same person, who has an establishment in only one of these countries, is not for each State an original and independent right; it is nothing but the extension of the right recognized by the State of the domicile."

All these cases are referred to in the Hamburg decision (p. 1467, Record), and are reaffirmed by the decision submitted by complainant. They strongly support the doctrine laid down in our brief and, as shown above, there is nothing in the decision submitted which is at variance with them.

It is hardly necessary to add that the facts in the German action—a provisional proceeding, at best—are totally different from this explanation in the case at bar, where the complainants are seeking to prevent defendant from using a trade-mark, which complainants, on the one hand, have affirmatively abandoned, and which defendant, on the other hand, uses by virtue of decrees of French Courts of competent jurisdiction (L. R. A. C. (1910), 262).

The decision of the House of Lords affirming the judgment of the English Court of Appeals (L. R., 2 Ch. (1908) 715 which reversed the decision of Lord Justice Joyce, will also probably be referred to by complainants. We add Appendix B to this brief, the opinion of Mr. Justice Joyce which is not officially reported.

The evidence in that case was entirely different from the facts here. Not only does it appear that a number of witnesses, familiar with the

manufacture at Tarragona, were called to testify to the existence of the secret, but defendants in that action had issued an advertisement which might be interpreted as a *representation that the liqueur was manufactured by the Monks*, and great stress was laid by the Court on this. This element is entirely lacking here. Moreover, the complainants had not sold their article in England with the warning label, which they have adopted for sale in this country, and on the evidence, as it appears from the opinion, the Court could not say that the public and the trade recognized no longer the label used by the defendant as indicating that the article was manufactured by the Monks. Moreover, while it appears in this case that the discontinuance of the old label and the adoption of a new one were entirely voluntary acts on the part of complainants, this state of facts did not exist in England. The Liquidator's name had been entered there in the Patent Office as the owner of the old marks and the complainants were therefore compelled to use a new label if they wished to sell their product at all. Their action was brought primarily to cancel such registration so that they would be in a position to acquire and use the old marks. It could not there be argued, as we have attempted to argue here, that they had deliberately and intentionally adopted the new label for the purpose of convincing the public that the old mark no longer indicated that the liqueur was manufactured by them. Each case must be judged on its own facts and, as we have tried to show, the evidence in this case completely bears out the contentions of the defendant.

The decision was based entirely on the assumption that the French law could not affect the trademarks registered in England. We believe that

such conclusion of the Court was erroneous, and we refer this Court to the testimony of that eminent statesman, Alexander Millerand, (pp. 1196, 1213 of the Record), which shows clearly that the law was intended to affect the trade-marks even where they were registered outside of French territory and that the French cases, relied upon by the complainants to support a contrary proposition, are not applicable here.

But assuming that the law in and of itself did not transfer rights acquired by the registration of trade-marks in foreign countries where such registration of itself confers the right, we believe that a clear distinction exists between such a case and the case at bar, where the rights are based not on any rights conferred by statute but on the existence of a good-will, which by its nature, is dependent on and forms part of the trade-mark and good-will in the country of origin. We refer the Court on this point to the opinion of Judge Noyes in the Court below.

We have already referred to the fact that the principal argument used by Lord Shaw, namely: that it is recognized by the French courts that under the law of 1901 the trade-mark in France is separated from the product, and that such separation cannot exist in other countries, is completely refuted by the later decision of the Court of Appeals of Grenoble which expressly overruled such dictum of the lower French Court.

XIII.—The decree of the Circuit Court of Appeals should be reversed and the Court should be directed to dismiss the bill.

ADOLPH L. PINCOFFS
ROGER FOSTER
Of counsel for defendants-respondents.

Appendix A.

COURT OF APPEALS OF GRENOBLE

FIRST CHAMBERS FOR CIVIL CASES.

Judgment of the 5th of February, 1908.

LECOUTURIER,

vs.

DUBONNET.

On the motion to dismiss the appeal of Lecouturier.

Considering that Dubonnet bases this motion on the fact that between the hearing of the case and the judgment, Lecouturier, the liquidator, has assigned the business connected with the liquidation of the assets of the Congregation of the Carthusians first to a M. Cusenier, distiller, and thereafter to a corporation, which has become the Compagnie Fermiere de la Grande Chartreuse and that he is therefore, owing to this, now a stranger to the suit, but that, in order to appreciate the absurdity of this contention, it is sufficient to know that Lecouturier, party to the suit before the Court below as liquidator of the Congregation of the Carthusians, has been ordered, on account of acts committed as such, to pay 5,000 francs as damages and the costs, and that in that same capacity, which he has never lost, he has appealed to this Court, and also that the release of this business by Lecouturier to third parties has so little modified his legal status as to Dubonnet that the latter, far from waiving the judgment obtained against him, intends fully to enforce it against him, so that Dubonnet, in any point of view, contradicts himself, whether he invokes or rejects in turn, as his interests seem to dictate, acts which he considers as *res inter alios acta*, or whether he con-

siders his adversary as bound by a judgment and at the same time claims that he has no right to appeal from it.

Considering that this system would lead, in contradiction of all principles, to make a judgment of the court of original jurisdiction final because Lecouturier is claimed to have lost the right to appeal, because he has released his right to third parties, without these third parties having acquired the right to appeal, because they were not parties to the original judgment, that from any point of view it is necessary to apply here the fundamental rule that any party has the right to appeal from a judgment by which he is aggrieved.

On the motion to dismiss the appeal and the intervention of the Compagnie Fermière.

Considering that the Company, not having been a party to the original judgment, cannot appeal from it, but that it can intervene, on the ground that by judgment of the 30th of June, 1906, it has acquired at a public sale the business of the products of the Grande Chartreuse, including the good will, the trade-marks and commercial names and that the present suit rightly or wrongly gives rise between Dubonnet and Lecouturier to conclusions and contentions of such a nature that the rights which belong to it may be injuriously affected and diminished by them.

That this is particularly the case as to the point relating to the name "Chartreuse," which the Company considers as an industrial name, an abbreviation of the trade-mark, owned by it, that it is not doubtful, that in view of the decision on this point, it would have the right eventually to move to set the judgment aside, and that it follows from this, that it is now in a position to intervene.

Considering that the point taken by Dubonnet

that the Company, as purchaser at the judicial sale, was bound to obtain the consent of the State before it could have the benefit of the lease of the real property, belonging to the State Domain, made to Lecouturier, the 15th of November, 1904, and that it has not proved that such consent was obtained, is not well taken; that it is sufficient to refer to the conditions of the sale and to the judgment to find the proof that the final grant of the business and of the trade-marks, the source of the Company's right to act and to intervene, has not been subordinated to the continuation of the lease or to any formality; that on the contrary, it is stipulated in this document that the judicial purchaser will become the owner of the property sold by the sole fact of it being knocked down to him and that he will make it his personal matter to obtain the consent as far as the lease is concerned without any right to indemnity or any recourse against the vendor in case he does not succeed and as it is admitted that the Company is conducting its business in the premises which are covered by the lease, paying a certain amount to the State, it is perfectly evident that a third party, like Dubonnet, in trying to raise the question what the exact conditions are on which the intervening party occupies such premises, whether in virtue of a regular lease or a provisional arrangement, interferes in questions between third parties which are none of his business.

As to the Merits.

Considering that the parties have taken pleasure in the argument on appeal in broadening and enriching the point at issue, by complicating it by new difficulties, but that it is the province of the Court to restrain it within its proper and narrow limits, at the risk of taking away its most interest-

ing feature, to banish everything of which the only use can be to be a prey to eager advertising and to consider only those questions the decision of which is necessary.

Considering that it is not useless to state that the suit pending between the parties consists, as to Dubonnet, of a claim of 80,000 francs for damages for the injury inflicted on him by Lecouturier, in his official capacity, by an unauthorized attachment of merchandise, and by unfair competition and, as to Lecouturier, of a counterclaim of 100,000 francs on account of the damages he has suffered by illegal acts of Dubonnet, that it is important to hold that of the grievances urged respectively by Dubonnet and Lecouturier, there are only three which must be considered as constituting acts which have caused damages, and of which the existence and character are clearly proved, viz., two, imputable to Lecouturier, a circular without date, threatening prosecutions, and the attachment of liqueurs at the station of Cerbère, and one, imputable to Dubonnet, consisting in the wrongful use of the title of general representative of the products of the Grande Chartreuse, after the liquidator had taken possession of the trade-mark, and that it is proper as to the other grievances, to eliminate them all, some because they are without any foundation, as, for instance, the article in the *Temps* of the 14th of September, imputed by Dubonnet to Lecouturier without any direct evidence or presumption, or without any possible application of the maxim *is fecit qui prodest*, the others because they do not exceed the limits which are universally tolerated of commercial and extensive advertising, and do not give rise to an action for damages, or because as both parties to the suit are responsible for them, one is balanced by the other.

Considering that the circular already referred to, in which all parties who have in their possession or sell the liqueur designated as "des Chartreux," evidently exceeds all limits and constitutes an illegal aggression, that Lecouturier cannot deny his responsibility for it, because it emanates from his representatives, but that its limited publication cannot have injured to a considerable extent the interests of Dubonnet, and that on this point reference is made to the opinion of the Court below, which this Court adopts.

Considering that, as it has been finally adjudicated, that the Union Agricola has the right to place on its labels the words "Pères Chartreux" to designate, in conformity to the facts, the manufacturer of the Tarragona liqueur, it cannot be denied that the attachment by Lecouturier, at Cerbère, on the 4th and 8th of July, 1904, of 410 cases of the liqueur sent from Tarragona to Dubonnet, on the pretext that the label attached to their products was a counterfeit and fraudulent imitation of the label of the products of the Grande Chartreuse was illegal; that it follows, it is true, that by sequestrating in this manner during a certain period a stock of liqueurs intended for Dubonnet he has prevented the latter to fill the orders of his customers at the proper time, and has substantially interfered with the conduct of his business, but that it is proper to reduce the damage, so claimed, to its proper proportions, and that, on taking into account the extract of his books for the year 1904, which have been put in evidence, and at the same time other circumstances, which may have influenced the amount of sales, the total loss suffered by the plaintiff, both from these acts and from the circular, should be fixed at 3,000 francs.

Considering that it cannot be contested that Du-

bonnet has caused serious damage to Lecouturier by persisting in holding himself out publicly as representative of the Grande Chartreuse on his signs and advertisements, while he was no longer authorized to do so and by continuing this infringement of his right and trade-mark, not only after the judgment of the court of Grenoble of the 23d of April, 1904, which ordered the liquidation of the assets of the Carthusians, but after the order of the 17th of May, 1904, which gave to the liquidator the actual possession of the establishment of Fourvoirie and its appurtenances and accessories and at least up to the summons of 15 September, 1904.

That Dubonnet cannot pretend that the judgment of 1904, which was affirmed on appeal, was not at that time *res adjudicata* as being only declaratory and not creating any rights, and that it is not doubtful that by creating fictitiously a confusion between the products of Fourvoirie and those of the Union Agricola, he has injured the sale of the former and has caused damage to the liquidation.

That the Court on this point adopts the opinion of the Court below, except as to the amount of such damages, which will be separately stated.

Considering that Lecouturier complains also that Dubonnet has injured the interests in his charge by serving to the public which asks for Chartreuse the liqueur of the Union Agricola, but that this is a mere unsupported allegation, that he does not specify when, where or by whom these practices have been indulged in and that absolutely nothing proves that this substitution he complains of has ever been made by the act or the interventions, direct or indirect, of Dubonnet, who cannot be held responsible for tricks which may have

been committed without his knowledge and against his will in places, the names of which have not been shown, and which, in all probability, are outside of his superintendence.

Considering that, at this stage, Lecouturier asks the Court to decide that the name "Chartreuse" is only an abbreviation of the label placed on the products of the Grande Chartreuse and partakes of the attributes of the trade-mark which has become the property of the State and that the Compagnie Fermiere, joining in the appeal, asks the Court to decide that the purchase at auction of the 30th of June, 1906, is as to it, an assignment of the exclusive ownership of the trade-mark and its accessories, that these conclusions presuppose, as far as the trade-mark of the Grande Chartreuse and its derivatives are concerned, that this point was at issue, and was presented to the Court below, either in the original action or in the counterclaim and as this nowhere appears, Dubonnet only makes use of his right when he asks that these conclusions, which form new issues, be rejected.

Considering that applying the same principles Lecouturier and the Compagnie Fermiere have the right to object to a statement, inserted in the "grounds" of the judgment below according to which the name of "Chartreuse" "does not appear to constitute a legal trade-mark, because it is not affixed to the product nor to be the private property of the liquidator."

That it is not without reason that they fear that, although the words quoted are not relevant to any point raised by Dubonnet, although they are not in accord with the observations by which they are preceded and although there is absolutely no reason why they should appear in this suit, this passage is of such a nature that, in view of the judg-

ment as a whole, it might be considered as forming part of the point decided and thus to be *res adjudicata* as against them.

That it is therefore just and sufficient, to give them full satisfaction, to expunge this ground of the judgment, with the same effect as if it had not been inserted, making on this point the most express reservations.

Considering that the Compagnie Fermiere, going farther than Lecouturier, asks to have the Court decide questions which are not properly before it as they were never raised before the Court below and of which the greater part do not seem susceptible of becoming the subject of litigation as they have been decided by final judicial decisions especially the acquiring of exclusive ownership, first, by the liquidator and afterwards by the Compagnie Fermiere, which purchased at a judicial sale the trade-marks registered for the benefit of the Congregation of the Carthusians and the intimate and necessary connection of the products made by the Company with the said trade-marks, but that, while superfluous, they are none the less improperly before the Court and that the intervenor cannot in order to have them passed upon by the Court, invoke the digression, escaped from the Court below as to the name "Chartreuse," which has been annulled or a ground of the judgment stating that the mark is separated from the product of which, till now, it had guaranteed the manufacture and origin, as such an observation is not connected with the pleadings of the parties or the points decided, has no resemblance close or far to *res adjudicata* and as nothing allows, especially after this judgment, which annuls it, to make it appear as a decision or judicial appreciation of the composition or the comparative value of the liqueurs in question.

Considering that it is not necessary to order the publication of the present judgment in the newspapers.

Considering that it is proper to divide the cost between Dubonnet and Lecouturier in the proportion in which they have been respectively unsuccessful, leaving for account of the Compagnie the costs of its intervention.

On these grounds and on the grounds given by the Court below, in so far as they are not rejected and are not contrary hereto.

The Court

Denies the motion to dismiss the appeal of Lecouturier from the judgment of the 7th of Feb., 1907, of the Civil Court of Grenoble.

Dismisses the appeal of the Compagnie Fermiere from the same judgment, but holds that it has properly intervened.

On the merits.

On considering the appeal of Lecouturier and the intervention of the Compagnie Fermiere and rejecting the incidental appeal of Dubonnet to pass on the question *de novo*, by way of reversing the judgment in part.

Decides that the unlawful attachment by Lecouturier of the 1st of July, 1904, and the publication of the undated circular for which he is responsible have damaged Dubonnet to the extent of 3,000 francs.

Decides that Dubonnet by continuing to represent himself to the public as the general agent of the products of the Grande Chartreuse subsequent to the judgment of the 23d of April, 1904, and the order of the 17th of May, 1904, has caused damage to Lecouturier in his official cacpacity, to the extent of 1,000 francs.

Dismisses the other grievances and demands, either as not proved or as destroying each other on account of the reciprocity of the wrong and the damages.

Orders, therefore, that Lecouturier, all counterclaims being thus adjusted, shall pay Dubonnet 2,000 francs.

Decides that the conclusion of Lecouturier and of the Compagnie Fermiere, intervenor, must be rejected because they tend to submit to this Court questions relating to trade-marks which have not been raised before the Court below either by the principal action or by the counterclaim and that those of a different nature which are properly before this Court, are satisfied, in so far as they are well taken, by the terms of this judgment.

Dismisses any broader or contrary conclusions, either principal or subsidiary, of all parties either as not properly before this Court or as not proven.

Decides that the costs in the court below or on appeal, with the exception of the intervention, will be added together, one-third to be paid by Dubonnet and two-thirds by Lecouturier.

The costs of the intervention to be paid by the intervenor.

Orders the repayment of the fine.

Orders that the costs shall be impounded for the benefit of the attorneys in the case on proving their rights thereto.

APPENDIX B.

Royal Courts of Justice,
19th October, 1907.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Before:

MR. JUSTICE JOYCE.

Rey vs. Lecouturier.

(From the Shorthand Notes of Cherer, Bennett & Davis, 8, New Court, Carey Street, W. C., and W. & C. Cook & Kight, Rolls Chambers, 89, Chancery Lane, W. C.)

REASONS FOR JUDGMENT.

MR. JUSTICE JOYCE. This is an action by a number of persons (one being the General Superior at the present time of the Carthusian Order), who, or some of them, in the year 1904, established a manufactory of liqueurs at Tarragona, in Spain. It was correctly described by the plaintiff's counsel in his opening as a "passing-off action" pure and simple, that is, an action against the defendants for relief in respect of the perpetration of what is a fraud at common law. As stated in my judgment of the 31st July, there is not any question here of an infringement of the right of the holder of any registered trade-mark, nor is there any physical or tangible property in dispute. The question is really, whether plaintiffs are entitled to an injunction to restrain the defendants from carrying on their business of the manufacture and sale of liqueurs as they have been doing for some two or three years past upon the ground that in such business the defendants are passing off goods as being, not their own manufacture, but as and for goods of the plaintiffs,

by which, I mean goods which the plaintiffs, or some of them, manufactured and had for sale at the time of the commencement of the action, and still manufacture and sell.

At the beginning of this century, it was, I think, common knowledge that the yellow and green liqueurs known as Chartreuse (I am not aware of any other name by which to designate them) were manufactured at the Carthusian Monastery of the Grande Chartreuse near Grenoble, in France, and most people were aware that these liqueurs were manufactured by or under the superintendence of the Monks, or some of the Monks, residing there. It was also, I believe, generally considered that the peculiar taste and flavor were produced by mixture with alcohol of the juices distilled from aromatic flowers and plants growing upon the Alps in the vicinity of the Monastery. No doubt these liqueurs, while so manufactured, acquired a considerable reputation in connection with the place of manufacture.

The distillery itself was not in the Monastery building, but at Fourvoirie, a sort of dependence of the Monastery, eight or nine kilometers away. Everything, however, was done by or under the superintendence of the Monks, and on the principal label used the description appeared "Fabriquée a la Grande Chartreuse."

But for many years prior to the year 1901 neither the Carthusian Order generally, whose domicile was in France, and whose parent house and principal seat was at la Grande Chartreuse, nor the Congregation (which I understand to be the correct term) of the Order at the Grande Chartreuse had been a legal association within the Republic of France. In that country, neither the Congregation nor the Order nor the members of either body as such were legally capable of acquiring or holding property.

It should also be borne in mind that in the laws of France there is no such thing as a trust. The relation of trustee and *cestui que trust* is unknown, so much so that the principal legal witness on behalf of the plaintiffs said that it was impossible to translate the term "trustee" into French. The Monks, or some of them, at the Grande Chartreuse did, nevertheless, in fact carry on the manufacture and sale of liqueurs.

Then in 1901 (July 31st), came the Law of Associations relating to associations formed for a purpose other than that of sharing profits. This law, among other things, effected the compulsory dissolution of every such association unless within a specified time it obtained a certain authorization from the Government. Upon such dissolution the liquidation of the property held by the Congregation was to take place under the supervision of the Court, which was to appoint a liquidator for the purpose, and the law provided for the restoration of any property belonging to the members before their entrance into the Congregation, or which might have come to them since—for certain payments to the members of the dissolved Congregation who might have no assured means of subsistence, or who could prove they had contributed to the acquisition of the property to be distributed by the proceeds of their personal labor for the realization after a prescribed period of what had not been claimed back or dedicated to charitable purposes, and ultimately for the distribution of the net assets amongst "the persons entitled", whatever may be the meaning and legal effect of that expression in the particular circumstances.

Application was made for the authorization required by the law. Somewhat voluminous communications passed between the Prior—who was

also *ex officio* the General Superior of the Carthusian Order—and the French Government. Ultimately the application for the requisite authorization was refused, and as from the 28th March, 1903, the Congregation of the Grande Chartreuse was, by the law of France, dissolved and ceased to exist.

On March 31st, 1903, the proper local tribunal appointed M. Lecouturier (who was the judicial administrator in the Civil Tribunal of the Seine) to be administrator sequestrator and liquidator of the property of the dissolved Congregation, both the property situate and held at the seat of the parent house, and the property at its various establishments. This M. Lecouturier is the principal, and was originally the only defendant in this action. I refer to him hereafter as the Judicial Liquidator. When this Judicial Liquidator proceeded to take steps to obtain possession, the Monks, though, I suppose, only passively, resisted the officials of the French Government, who accordingly had to use force, and at length, on the 29th April, 1903, the Monks were expelled. The manufacture of Chartreuse by the Monks had no doubt, previously ceased. They had taken care to get rid of all their stock of Chartreuse. This, as I understand, had been sold and sent to Switzerland, and it may be assumed, I think, that the Monks naturally took care not to leave behind them any considerable stock of labels or other stores. I do not suppose, nor indeed, has it been suggested, that there was anything illegal in the action of the French Government. I have nothing whatever to do with the policy or justice of its proceedings. Probably, if the truth were known, there would turn out to be a good deal to be said upon both sides.

Now, in making the return of the property of the Congregation of the Grande Chartreuse, without which the Authorization desired and applied for could not have been granted, all reference to their business establishment for the manufacture and sale of liqueurs was omitted, or rather this business was treated as being the property of the Abbé Rey, the Procureur of the Monastery, that is to say, the officer charged with the administration of its temporalities. Upon the attention of the Prior being called to this, the theory was advanced that the manufactory and business at La Grande Chartreuse were the absolute property of the Abbé Rey. The Prior protested that the business did not belong to the Monks, but had been sold and transferred to the Abbé by a solemn deed or instrument dated 20th November, 1897. I find it difficult to comprehend how, in the circumstances, having regard to what I understand to be the law of France, this property and business in the possession or control of the Monks could in point of law be the property, private or otherwise, of anyone. The Judicial Liquidator, however, as one would expect, applied to the French Court to establish that the deed of the 24th November, 1897, was tainted with simulation, asking that is should be declared to be void.

The date of the commencement of this action was the 30th May, 1903. The Judgment of the Tribunal, of which a not very perfect translation will be found in the evidence, as well as an office copy of the original, is dated the 23d April, 1904. It is a lengthy document reciting, as usual in France, the pleadings, proceedings, &c. Thereby the Court considering (*inter alia*) it to be demonstrated in an irresistible manner that notwithstanding appearance the Abbé Rey, the ex-Procureur, did not buy for himself on the 20th No-

vember, 1897, the business in litigation (*fonds de commerce litigieux*) with its accessories and the marks connected therewith, that he never had the *animus domini*, and was, in reality, the go-between (*prète nom.*) of the Congregation, of which he formed part, and that his civil incapacity made it impossible to be the legal owner (*legalement proprietaire*), that the deed of sale (*acte de vente*) in question ought therefore to be annulled as fictitious and simulated, the Abbé Rey having only stood in the place and stead (n'ayant fait que figurer en nom aus lieu et place) of the Congregation, the true owner in fact, but incapable of being so in law—that Lecouturier (that is the Judicial Liquidator) was therefore entitled to demand that the business of manufacturing liqueurs (le fonds de commerce de fabrique de liqueurs) with all the accessories which attached to it should be declared property comprised in the estate to be liquidated (dans la masse à liquider). I say, considering these, among other things: For the reasons given the Tribunal decided: that the business of a manufacturer of liqueurs, etc., carried on as well at the Grande Chartreuse as at Fourvoirie, under the raison commerciale of "Liqueur fabriquée a la Grande Chartreuse," comprising the connection and goodwill (la clientele et l'achalandage), the ownership of the trade-marks and the commercial names serving to distinguish these products, as well as the model of the bottles, flagons, boxes and cases serving to contain them, the exclusive right to the use, industrial and commercial, of the name of L. Garnier, the furniture, the utensils of every nature serving for the carrying on of the business (a l'exploitation), the merchandise, raw materials, manufactured products to be found in the warehouses, cellars and entrepôt, and all other belongings (dépendances) generally

whatsoever, of the said business which formed the subject of the Deed of Sale of the 20th November, 1897, were in reality the property of the Congregation des Chartreux—this deed being void and so on, and decided in consequence that the said business, with all its accessories, including the marque de fabrique, formed part of the assets to be liquidated (de l'actif à liquider). Now it has never been suggested before me that there was any invalidity or defect in these proceedings in the French court. I must take them to have been, as I believe they were, duly constituted as to parties, jurisdiction and otherwise in all respects. Indeed an appeal on behalf of the Monks to the proper court was rejected on the 29th July, 1905, and ultimately the original judgment was confirmed by the Cour de Cassation upon the 19th July, 1906. I do not see, therefore, how it would be possible for me to listen to any suggestion, if it were made, that the Carthusian Order generally, as distinguished from the Congregation, had or have any rights or interest in the business formerly carried on at the Grande Chartreuse not bound by this judgment of the French courts. It was urged, no doubt, that these proceedings had no effect on the property or rights of the plaintiff or of the Monks of the Order in this country. It might be necessary to consider this if and when it was shown that any such property or rights were in question in this action, and that the person or persons, if any, in whom such property or rights were legally vested were properly suing as plaintiffs in this action. Now the business, the subject of the proceedings in the French courts, was principally, and for all practical purposes may be taken to have been, the business of the manufacture and sale of Chartreuse. The Grande Chartreuse (including in that, as the Monks always did, the dis-

tillery at Fourvoirie) was the seat of the concern, and it was not carried on at or from any other place, either in France or elsewhere.

As regards this country it appears that a single firm, viz., Messrs. Riviere & Co., of London, purchased Chartreuse from a firm in Paris, by name Brezun & Co., the nature of whose relations with the Monks and the business carried on at the Grande Chartreuse does not appear. I imagine, however, that Messrs. Brezun & Co. purchased and paid for all the Chartreuse produced by the Monks at the Grande Chartreuse, and then did what they liked with it. The London firm, on its own account and at its own risk, purchased and paid for the Chartreuse which they obtained from Messrs. Brezun & Co., and then sold it again as they pleased to their own customers, who were not in any sense customers of Brezun & Co., or of the business carried on at the Grande Chartreuse. In my opinion, there is not in the circumstances, any foundation for the contention or suggestion that the Monks, or any of them, either as Carthusians or members of the Congregation of the Grande Chartreuse, or in any capacity whatever, had a separate or any business or goodwill in England. And I need not say that neither Brezun & Co., nor the Monks paid income tax here, nor, in my opinion, were they liable to do so (see Commissioners of Inland Revenue *v.* Muller & Co.'s Margarine, Limited, 1901, Appeal Cases, 217). It appears to me that only one business was carried on by the Monks, that its seat was at the Grande Chartreuse, that the goodwill of that business was also one, and so far as it had locality was in France.

Such business, with all its assets and accessories, including debts owing thereto, whether by persons in France or elsewhere, and the goodwill, passed to the Judicial Liquidator, just as much, in my

opinion, as if the person or persons carrying on the business at the Grande Chartreuse had become bankrupt and the Judicial Liquidator had been appointed the trustee, or whatever may be the equivalent terms in France.

Soon after the Judgment of the 23d of April, 1904 (which was subsequently confirmed, as I have already stated), the Judicial Liquidator, being then in possession of the manufactory and premises generally where the business had been carried on, was, as I understand, directed or authorized by the Judge to carry on such business, though I believe that I did not see any copy of the actual Order. But, at all events, in the month of July, 1904, the Judicial Liquidator begun upon these premeises to manufacture Chartreuse, not, it is said, and probably with truth, according to the precise processes previously used by the Monks, but no doubt to the best of his ability, and possibly according to processes just as good as those of the Monks, perhaps better, and he soon began to export his products to this country, using the same or similar labels—in fact, practically the same insignia generally as had been used in the business before—the principal label being one which bore the words "Liqueur fabriquée à la Grande Chartreuse." The first consignment of Chartreuse by the Judicial Liquidator to this country arrived in the month of October or November, 1904, but Messrs. Riviere & Co., whom I have already mentioned, were on the look out and succeeded in obtaining the stoppage of the goods at the Custom House for about eight months, viz., until some time in May, 1905. It appears that when the Monks were expelled, as I have mentioned, on the 29th of April, 1903, some few of them went to Spain. In the first half of the year 1904, the act-

ual documents are dated 6th February and July 20th in that year, the then General Superior of the Carthusian Order made arrangements with a Spanish Company, La Union Agricola, now one of the plaintiffs, for the establishment at Tarragona of a new manufactory for the production of Chartreuse. By the first of the documents just mentioned, the General Superior affected to assign to the Union Agricola the exclusive right of commercially carrying on the industrial operations which had hitherto been effected for the purpose of manufacturing the liqueurs and products of the Grande Chartreuse. There were special provisions as to the personnel to be employed in the manufacture, and the Union Agricola was to sell the products in all parts of the world at its own risk and on its own account. This new manufactory was accordingly established at Tarragona, but the Carthusians had not and have not any monastery there or anywhere within a distance of more than one hundred kilometres therefrom.

Of the liqueur manufactured under these arrangements in Spain, and no doubt by the same process, and so far as obtainable of similar materials to those used by the Monks in France before their expulsion, the first consignment arrived in this country in November, 1904, the first sale (as I understand the evidence) of any portion being made on the 22d March, 1905, while the product of the manufactory at the Grande Chartreuse consigned to this country by the Judical Liquidator was by the procurement of Riviere & Co., still detained at the Custom House.

The liqueur thus imported into this country from the new manufactory at Tarragona was sent in similar bottles to those used by the Monks at the Grande Chartreuse before their expulsion in

April, 1903, and the first three parcels bore the same labels, with the legend "Liqueur Fabrique a la Grande Chartreuse." If the matter were investigated, I expect it would be found that these labels were part of the old stock of labels, and strictly speaking of right belonged to the Judicial Liquidator. The statement on these labels, as applied to the liqueur from Tarragona, being obviously false, another label was added, indicating that the manufacture was "actuellement à Tarragona."

As I understand, after the first three parcels, the use of these old labels at Tarragona was altogether abandoned or discontinued, and a label was adopted and has ever since been used in connection with the liqueur from Tarragona bearing the inscription "Liqueur fabriquée," not "à la Grande Chartreuse," but "à Tarragone par les pères Chartreux," and this has continued to be and is the distinctive label of the liqueur manufactured by the plaintiffs at Tarragona. Apart from these words, I do not see any similarity between the label of the plaintiffs and that of the defendants.

Thus from the beginning of 1905 down to the present time there have been three kinds of Chartreuse on the market—the old stock, or what is left of the old stock made at La Grande Chartreuse before the expulsion of the Monks. This I understand to have been sent into Switzerland, and bought up, I think, by Riviere & Co. before the expulsion (2) the Chartreuse manufactured at the Grande Chartreuse and sold, in the first instance, by the Judicial Liquidator, and now by his assigns the Compagnie Fermière, and (3) the Chartreuse produced by these plaintiffs at the new manufactory at Tarragona. The respective labels on the 2d and 3d are different in the respects I have re-

ferred to, and since the middle of the year 1905 there has been a vigorous controversy by circulars and advertisements between the plaintiffs or the Union Agricola or Messrs. Reviere & Co. on the one part and the defendants, or now I suppose the Company Fermière on the other, as to which of the two liqueurs, viz., that now manufactured at the Grande Chartreuse or that manufactured at Tarragona ought to be considered the genuine Chartreuse. In other words, there has from the first been an openly declared rivalry and competition between these plaintiffs and the defendants, and nothing farther from the contemplation of either party than that their Chartreuse should be passed off as the product of the other or be purchased as or for the other, although no doubt each has been striving to deprecate the product of the other and by competition to diminish its sale, asserting the superiority of their own, and if either party could establish a legal right to a monopoly of the use of the term Chartreuse this would no doubt seriously embarrass the business of the other. But there is not, and never has been, any actual confusion between the two products—so far as I have been able to ascertain, and some persons prefer one and some the other; which is the better appears to be a matter of taste and opinion, perhaps not altogether uninfluenced by prejudice of various kinds.

Upon the 27th May, 1905, this action was instituted by the Abbe Rey, whom I have already named (the ex-Procureur of the dissolved Congregation of the Grande Chartreuse and now deceased), alone, against the Judicial Liquidator. As originally framed, the action sought relief with respect only to certain registered trade-marks, but in the Statement of Claim, delivered 12th August,

1905, a claim was inserted for an injunction to restrain the defendants from using the word "Chartreuse" in connection with the sale of liqueurs not manufactured by the plaintiffs.

On or before delivery of this Statement of Claim (12th August, 1905), the present General Superior of the Carthusian Order was added as a co-plaintiff, suing on behalf of himself and all the other members of the Carthusian Order and La Union Agricola, and Messrs. Chapman & Co. were added as defendants in their character of consignees in this country of the Chartreuse manufactured by the Judicial Liquidator at the Grande Chartreuse. There have been subsequent amendments. The portion of the action relating to registered trademarks has been abandoned, and practically (see Re-amended Statement of Claim, delivered 19th February last) the only claims now left are a claim to an injunction to restrain the defendants, their servants and agents, from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the plaintiffs, and, secondly, from selling or offering for sale in this country any liqueur or other liquor not so manufactured in such a manner as to represent or lead to the belief that the liqueur or other liquors manufactured or imported or sold by the defendants are the manufacture of the plaintiffs. The claim to such injunction is founded upon allegations of the manufacture and sale by the Judicial Liquidator, and persons claiming under him, of Chartreuse in bottles and with labels similar to those used by the persons whom the plaintiffs call their predecessors at the Grande Chartreuse, the same not being made, it is alleged, according to some secret process which the Monks at the Grande Chartreuse were said to have used before their expulsion. Apparently the idea of the au-

thors of this document was that the possession of this secret of itself, and without anything more, would entitle the plaintiffs in some way or other, which has never been explained to me, and which I do not understand, to maintain this action. It is alleged that what the defendants are doing in their manufacture of Chartreuse is calculated to deceive purchasers into the belief that the liqueur sold by the defendants was made according to the alleged secret process and by the Monks of the Order.

Counsel for the plaintiffs being pressed by me upon the subject, practically admitted that the only ground for the claim to the injunction secondly claimed was the sale by the Judicial Liquidator or the defendants in or to persons in this country of the liqueurs now manufactured at the Grande Chartreuse or Fourvoirie, that is at the old manufactory and distillery with the same label as formerly used for the liqueur manufactured there before the expulsion of the Monks, especially the use of the label with the words "Liqueur Fabriquée a la Grande Chartreuse," and I think I may take this to be the only ground for the claim to the injunction secondly claimed. It seems then to come to this, that the complaints of the plaintiffs are two: (1) the use by the defendants of the word Chartreuse; and (2) the use of the old label with the words "Liqueur Fabriquée a la Grande Chartreuse" (but not in fact containing the word "Chartreuse" as the designation of any liqueur).

I may say at once that in my opinion the expression "Liqueur Fabriquee a la Grande Chartreuse"—as applied to the Chartreuse manufactured and sold by the defendants—is literally true and perfectly correct, notwithstanding some suggestion that inasmuch as the Monks no longer in-

habit the convent buildings everything that could be called "La Grande Chartreuse" has ceased to exist. In my opinion La Grande Chartreuse by itself is and has always been used as a place name, and properly indicates a locality or district. Obviously the expression "Liqueur Fabriquée a la Grande Chartreuse" would not be true as applied to the liqueur manufactured, delivered and sold by the plaintiffs, and indeed it has never been so applied except with respect to the first three parcels imported in 1904, or possibly early in 1905, when the qualifying words before mentioned were added to correct the statement on the original labels as to the place of manufacture of the liqueur contained in the bottles bearing the label.

The claim of the plaintiffs is not merely to restrain the Judicial Liquidator or the defendants from selling their liqueurs in this country, or without sufficiently distinguishing it from the product of the new and present manufactory at Tarragona, but they ask to have the defendants restrained from all use of the name Chartreuse in connection with any of their liqueurs at all, whatever that may mean. This strikes me as rather a bold claim, and the form of the injunction asked appears to me to be unusual and peculiarly stringent.

Now it is not alleged, and I do not understand it to have been ever suggested—certainly there is no evidence (or nothing worth calling evidence) to show that what the Judicial Liquidator has done, or the defendants are doing, was or is calculated to deceive anyone into the belief that the Chartreuse which any of the defendants have at any time offered for sale is not of their own manufacture, but is some of the Chartreuse dealt in by the Union Agricola, or which the plaintiffs have for sale since the opening of their new manufactory at Tarragona, or at any time since the expulsion of the Monks.

Unless something of this kind be alleged and proved, I fail to see how these plaintiffs can have any ground for maintaining a passing-off action (as this is) against the defendants.

First of all, and generally, it appears to me that the defendants have a complete answer to the complaints of these plaintiffs in this, namely, that by virtue of the French laws in reference to unauthorized associations and the result of the proceedings in the French court the Judicial Liquidator has acquired completely, and in their entirety, the business and assets of the business carried on by the Monks at the Grande Chartreuse before their expulsion, with all the accessories of such business, so that the Judicial Liquidator was, and the defendants are now, entitled to do everything they have done of which the plaintiffs complain. The Judicial Liquidator having legally acquired or succeeded to and been put into possession of the business became, I think, entitled to manufacture and sell the same or similar products, and, in particular, the liqueur known as Chartreuse under the same trade name or description, in the same bottles, and generally under the same insignia in every respect as the Monks did at the Grande Chartreuse before their expulsion, and to hold himself out to the public as the person so entitled. And I think that he became entitled to do this, whatever the consequences might be to these plaintiffs, or any one whom they may represent, there being no question of the Monks, or the plaintiffs, or any of them, being rendered subject to any liability by what is being done.

I hold that all the rights of the Monks (in which term I include both the Congregation of the Grande Chartreuse and the Carthusian Order generally, if indeed in point of law such Order had

any rights in or with respect to the business of manufacturing and selling Chartreuse at La Grande Chartreuse) passed to the Judicial Liquidator, and that such of the Monks as emigrated to Spain did not carry with them any property or right to or with respect to the business previously carried on at the Grande Chartreuse or any of its accessories. In no legal sense is the manufacture or business at Tarragona a continuation of or carried on in succession to the business that was carried on at La Grande Chartreuse before the expulsion of the Monks. The business at Tarragona is a new business, and its owners do not, in my opinion, possess any right or property arising out of or connected with the business formerly carried on by the Monks at the Grande Chartreuse before their expulsion.

In the view that I take of this case, it is not really material what particular process or ingredients are or have been used by the defendants in their business at La Grande Chartreuse and the plaintiffs in their business at Tarragona respectively. And it is also in my opinion immaterial whether plaintiffs had or ever had any secret process or recipe or not. In a "passing-off action" it is immaterial whether the goods passed off by the defendant are or are not identical with the goods of the plaintiff for which they are passed off, nor does it matter in the least what the goods that are passed off may or may not be if only they be fraudulently passed off. As it seems to me, the greater the difference between the goods passed off and those for which they are or are alleged to be passed off, the greater the difficulty and the less the probability of creating confusion between them.

Assume that the Monks at the Grande Chartreuse had a secret either with respect to the selection of the ingredients for making their liqueur

or the mode of dealing with the ingredients when obtained, though for anything proved in this case it may well be that such secret is of no very great importance, and that for all practical purposes the same or even a better result might be obtained in a different manner, it has not been shown that in the minds of the public Chartreuse was associated with any special secret or—so far as I recollect—that they ever heard of the existence of such a secret. No one has ventured to suggest that what the public understood by Chartreuse is a liqueur made according to some precious secret in the custody of some or one of the Monks. All that is alleged in this respect is that Chartreuse means a liqueur made by "the Monks." The use by the defendants of the term Chartreuse or of the label "Liqueur fabriquée a la Grande Chartreuse," no more amounts to a representation that the liqueur is manufactured according to any secret process of the Monks than it amounts to a representation that it is made with Spanish brandy, as we were told that the Chartreuse of the Monks has been since the phylloxera, though previous to that French brandy was used. In other words, in the use of the term Chartreuse, and of this label by the defendants, I find no misrepresentation at all. Besides, if the plaintiffs have and use a secret process or recipe—which the defendants have not yet discovered—for the manufacture of Chartreuse, still the defendants merely by representing, though untruly, that the Chartreuse which they offer for sale is manufactured by them according to a process similar to, or even the very same as that of the plaintiffs, would not thereby, in my opinion, render themselves liable to an action at the suit of these plaintiffs. Such a misrepresentation, if made, might possibly entitle

a purchaser to sue the defendants, or such of them as he bought from. What the defendants may not do, is to represent the goods they offer for sale as being not of their own manufacture, but to be the very goods or manufacture of the plaintiffs —of the goods, in fact, which the plaintiffs are selling or offering for sale. In former actions in this country, that is what I understood the courts to have held and, properly so far as I can judge, that the defendants in such actions were doing.

The plaintiffs do not possess any of the old stock of Chartreuse manufactured before the expulsion. They disposed of all that previously, and these plaintiffs therefore could not maintain an action to restrain defendants from representing, even if they did expressly represent, that what they manufacture and sell is part of the old stock or similar to the old stock.

There being no question of a libel on the goods or manufacture of the plaintiffs, the only misrepresentation by defendants concerning their goods that the plaintiffs can be entitled to have restrained by injunction would, I think, be a representation that what the defendants offer for sale is not their own manufacture, but is actually some of the very Chartreuse that the present plaintiffs, or some of them, offer for sale, which last-mentioned Chartreuse is manufactured in Spain, and of which each bottle bears a label, "Liqueur fabriquée a Tarragone." There has not, in fact, however, been any such misrepresentation. The defendants say and emphasize the fact that their Chartreuse is manufactured at, and is the only liqueur manufactured at, the Grande Chartreuse, and that the Chartreuse of the defendants is not so manufactured.

I fail to see how the plaintiff can possibly have acquired or be entitled to any monopoly of the use of the term "Chartreuse" to designate a liqueur or how the use of such word by the defendants can be a fraud upon these plaintiffs. So far as I have been able to discover, the designation "Chartreuse," as applied to a liqueur, was not invented by the Monks, and did not so appear on any of their labels. I think that Chartreuse, as designating the liqueur now so called, gradually came into use with the public, and originated in the circumstances conspicuously stated on the labels, or in the statement on the label, that the liqueur in the bottle bearing the label was manufactured at La Grande Chartreuse.

If there could be, and ever was, any monopoly of the use of the word "Chartreuse," such monopoly was an asset of, or an accessory to, the business carried on at La Grande Chartreuse before the expulsion of the Monks, and so consequently passed to the Judicial Liquidator, and belongs to the defendants and not to any of the plaintiffs.

I disbelieve and decline to accept the evidence, if indeed it was intended to be taken seriously, that Chartreuse means simply made by the Carthusian Monks. It is no more an essential characteristic of Chartreuse, properly so called, that it should be made by Carthusian Monks than that it should be made at La Grande Chartreuse. Suppose the whole of the concern at Tarragona were handed over with the alleged secret to La Union Agricola, and all connection of any of the Monks with that concern was to be absolutely put an end to, what the Union Agricola then made would still, I suppose, be Chartreuse. If the old process, said to be secret, had been or were to be abandoned, and a new process totally different, but producing

the same or a better result were to be adopted, I do not see any reason why the new product should not, without impropriety, be called Chartreuse. It would, to my mind, be absurd to say that nothing is or could be Chartreuse unless made precisely according to the secret recipe, nor do I understand either counsel or any of the witnesses on behalf of the plaintiffs to have ever asserted this. The utmost they say is that Chartreuse means a liqueur made by the Monks. It was not proved, nor I believe suggested, that the public knew or cared anything about there being any particular process or mode of manufacture, whether secret or otherwise.

It is quite plain that the Judicial Liquidator and the defendants are entitled in France to designate the liqueur manufactured by them at La Grande Chartreuse since the expulsion of the Monks as Chartreuse, and to sell it with the label "Liqueur fab., &c.," and I do not see why they should be liable to be restrained by injunction from importing such Chartreuse, and without removing the label, into this country. It would be a strange result if the liqueur that as in France commonly and properly designated Chartreuse must be called by some name altogether different in this country. Here, subject to any public law to prevent fraud upon the public, a merchant keeping clear of the law of libel not in question in this case, may call his goods by any name he pleases, and may puff the wares which he offers for sale as much as he likes, provided that he do not thereby fraudulently represent or induce the public to believe that they are not his own goods or manufacture, but of the very goods or manufacture which another person is offering for sale, in which case such other person may

complain of the deception if productive of damages to him.

Neither in the use by the defendants of the term Chartreuse, nor of the label "L. Fabriquée à la Grande Chartreuse," I find any misrepresentation at all, and certainly none that is actionable by these plaintiffs.

Moreover, what is complained of has been going on for more than two years. No case of actual deception or mistake from the use by the defendants of the bottles or labels complained of has been, or in my opinion, could be shewn, nor do I believe, that a single person has been, or could be, deceived by what the defendants have done, or are doing, into purchasing the Chartreuse of the defendants when it was intended to purchase that of the plaintiffs.

The fact that a person who asked for Chartreuse made by the Monks was, under the circumstances narrated by some of the witnesses, given Chartreuse not made by the Monks, does not, in my opinion, prove, or tend to prove, any fraud or misrepresentation on the part of the defendants, or establish any probability of deception. It does not appear that any of the vendors thought the liqueur sold was made by the Monks; none of these vendors, or any one else, was called to say that he had been deceived or had purchased under any misapprehension.

I do not consider it necessary seriously to consider the suggestion contained in paragraph 12 of amended statement of claim, that what the defendants do or have done is calculated to deceive purchasers into the belief that the Monks are still at the Grande Chartreuse, and that the plaintiffs' liqueur is made by them. I think that everybody, who knew that the old Chartreuse was made by

the Monks, knows well enough that they have been expelled. And, of course, Messrs. Riviere & Co., who are the sole consignees here of the present plaintiffs, and the members of which firm appeared as witnesses on their behalf, have taken very good care, by advertisements and otherwise, to have all their customers made aware of the view which they take of the case and of the controversy between the plaintiffs and the defendants.

It is said lastly in the statement of claim that the rights of the plaintiffs are infringed, but without specifying what right or of which plaintiff. I do not think that the Carthusians as a body, distinct from the Congregation of the Grande Chartreuse, ever had any rights in the matter, and I doubt their title to sue as they do in this Court, but this last point has not been argued before me.

For the reasons indicated I have come to the conclusion that this action cannot be maintained, and it is dismissed accordingly.

Supreme Court of the United States

No. 99.

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,

Petitioner,

vs.

CUSENIER COMPANY,

Respondent.

Notice of Motion, Motion, and Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

PHILIP MAURO,
Attorney for Petitioner.

C. A. L. MASSIE,
Of Counsel.

C. G. Roebuck, 71 to 78 Spring Street, New York.

Supreme Court of the United States,

No. 291, OCTOBER TERM, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,

Petitioners,

vs.

CUSENIER COMPANY,

Respondent.

Notice of Motion.

TO THE CUSENIER COMPANY, RESPONDENT:

Please take notice that the annexed Motion and Petition will be submitted to the Supreme Court of the United States at the Court Rooms thereof in the City of Washington, D. C., at the opening of the Court on January 3, 1910, or so soon thereafter as counsel can be heard.

PHILIP MAURO,
Attorney and Of Counsel for Petitioners.

Due service of the foregoing Notice and of the accompanying Motion and Petition is hereby admitted this 17th day of December, 1909.

THE CUSENIER COMPANY,
By
ADOLPH L. PINCOFFS,
ROGER FOSTER,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES,

No. 291, October Term, 1909.

Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,

Petitioners,

vs.

Cusenier Company,

Respondent.

Motion.

And now comes the said above-named Petitioners, Pere Alfredo Luis Baglin, etc., by their attorney Philip Mauro, Esq., and move this Honorable Court, upon the certified Transcript of Record herewith submitted, and upon the annexed Petition, for a Writ of *Certiorari* to the U. S. Circuit Court of Appeals for the Second Circuit, directing said Court to transmit to this Honorable Court the annexed transcript of proceedings herein subsequent to April 19, 1909; and for such relief to Petitioners as to this Court may seem just.

Philip Mauro,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES,

No. 291, OCTOBER TERM, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,
Petitioners,

vs.

CUSENIER COMPANY,
Respondent.

Petition to Supplement Record Already Before the Supreme Court.

Your Petitioners, Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for himself and the other members of said Order, respectfully show to your Honors as follows :

1. This is the suit involving the right to the use, in this country, of the word-symbol " CHARTREUSE," etc., upon cordials or liqueurs. Heretofore, on or about April 19, 1909, this Honorable Court has granted its Writ and Cross Writ of *Certiorari* directed to the United States Circuit Court of Appeals for the Second Circuit in the above-entitled cause, whereby there has been brought before your Honors the transcript of pleadings and proofs and other proceedings in the above-entitled suit, instituted by your Petitioners in the Circuit Court of the United States for the Southern District of New York, including respondent's appeal from the Interlocutory Decree of said Circuit Court to said Court of Appeals and the decision and Order of said Court of Appeals ; and the said matter is now awaiting argument and determination in this Court.

2. Your Petitioners further show that—*subsequent* to the assumption of jurisdiction by this Honorable Court by the granting of said Writs of *Certiorari*,—your Petitioners (as complainants below), on July 29, 1909, obtained from one of the Judges of said Circuit Court an Order to Show Cause, based upon the affidavit of R. L. Scott, (verified July 29, 1909); that the same came on duly to be heard upon said affidavit and upon the opposing affidavit of Adolph L. Pincoffs (verified Aug. 11, 1909); that a decision was rendered thereon, and in accordance with said decision an Order was duly entered in said Circuit Court on Aug. 23, 1909, adjudging that respondent had violated the injunction hitherto directed by said Court of Appeals (which injunction is already before this Court for review) and fining said respondent for contempt.

3. That thereafter the respondent (defendant below) took its appeal and likewise its writ of error to the said United States Circuit Court of Appeals for the Second Circuit; that on Nov. 8, 1909, said Court of Appeals reversed said order of said Circuit Court (of Aug. 23, 1909), and on Nov. 18, 1909, entered its order of reversal; that the Mandate of said Court of Appeals issued thereon to said Circuit Court, whereupon on Nov. 22, 1909, the former order of Aug. 23, 1909, of said Circuit Court was reversed in said Circuit Court with costs,—all as will more fully and at large appear by reference to the annexed Transcript of Record to be presented herewith.

4. Your Petitioners show that the subject of said proceedings (subsequent to this Court's Writs of April 19, 1909) consists of the use by said respondent, upon liqueurs not manufactured by your Petitioners, of the words "Peres Chartreux"; that such words are used upon a label containing, among other things, the words "Chartreuse" (or "Grande Chartreuse"), which latter were employed by respondent in pursuance of the former order of said Court of Appeals, dated Aug. 21, 1908 (and hitherto brought before this Court, where it is still pending); and that a transcript of respondent's said label here complained of is printed on page 6 of the Transcript of Record submitted herewith.

5. Your Petitioners aver that said label is in violation of your Petitioners' rights in the premises and of the injunction

directed by said Court of Appeals; that it falsely tends to induce the public to believe respondent's business is the genuine business originated and carried on for so long by your Petitioners, to identify respondent's product with your Petitioners personally, and to induce the public to believe respondent's liqueur is the same as your Petitioners'; and that it is an unlawful attempt to trade unfairly upon the reputation and good-will of your Petitioners.

6. Your Petitioners further aver that said subsequent proceedings, now sought to be brought before this Court in supplement to the Transcript hitherto certified, constitute an important part of this litigation, are inseparably allied to the proceedings hitherto brought before this Court and now pending here, and are very material in explaining the same and in showing the rights of your Petitioners and the motives of respondent; that said subsequent proceedings show, among other things, that what respondent seeks to make use of is *personal* to your Petitioners (rather than *geographical* or *local* in its nature); and that said Court of Appeals was improvident and ill-advised in modifying the original decree of the Circuit Court by granting leave (as they have done) to respondent to employ in any manner and under any restrictions, in connection with liqueurs not manufactured by your Petitioners, the words "Chartreuse" or "Grande Chartreuse", or any synonym or derivative thereof; that respondent, in availing itself of the permission so granted it by said Court of Appeals, is inevitably making use of and unlawfully trading upon the good-will and reputation *personal* to your petitioners; and that respondent should not be permitted to use any words or symbols identified with your Petitioners or with the business and good-will originated and heretofore maintained by your Petitioners,—all of which matters constitute the very essence of the pending controversy hitherto brought before this Court by the Writs of *Certiorari* granted herein on April 19, 1909.

WHEREFORE, your Petitioners pray that this Honorable Court will again grant its Writ of *Certiorari*, directed to said United States Circuit Court of Appeals for the Second Circuit, requiring that the record and proceedings herewith submitted, being the proceedings herein subsequent to April 19, 1909, be

certified to this Court; and that the same may be annexed to the main Transcript hitherto certified to this Court; and that this Court will thereupon dispose of the entire litigation thus brought before it, and grant your Petitioners such other and further relief as justice may require.

And your Petitioners will ever pray.

PERE ALFREDO LUIS BAGLIN,
Superior-General of the Order of Carthusian Monks,
for himself and all of the other members of said Order,

By PHILIP MAURO,
Their Attorney.

C. A. L. MASSIE,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. [redacted] 99.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order,

Complainants-Appellants,

vs.

THE CUSENIER COMPANY,

Respondent.

Notice, Complainants-Appellants' Answer and Cross-Motions in Response to Defendant-Appellee's Motion to Dismiss Appeal, and Brief.

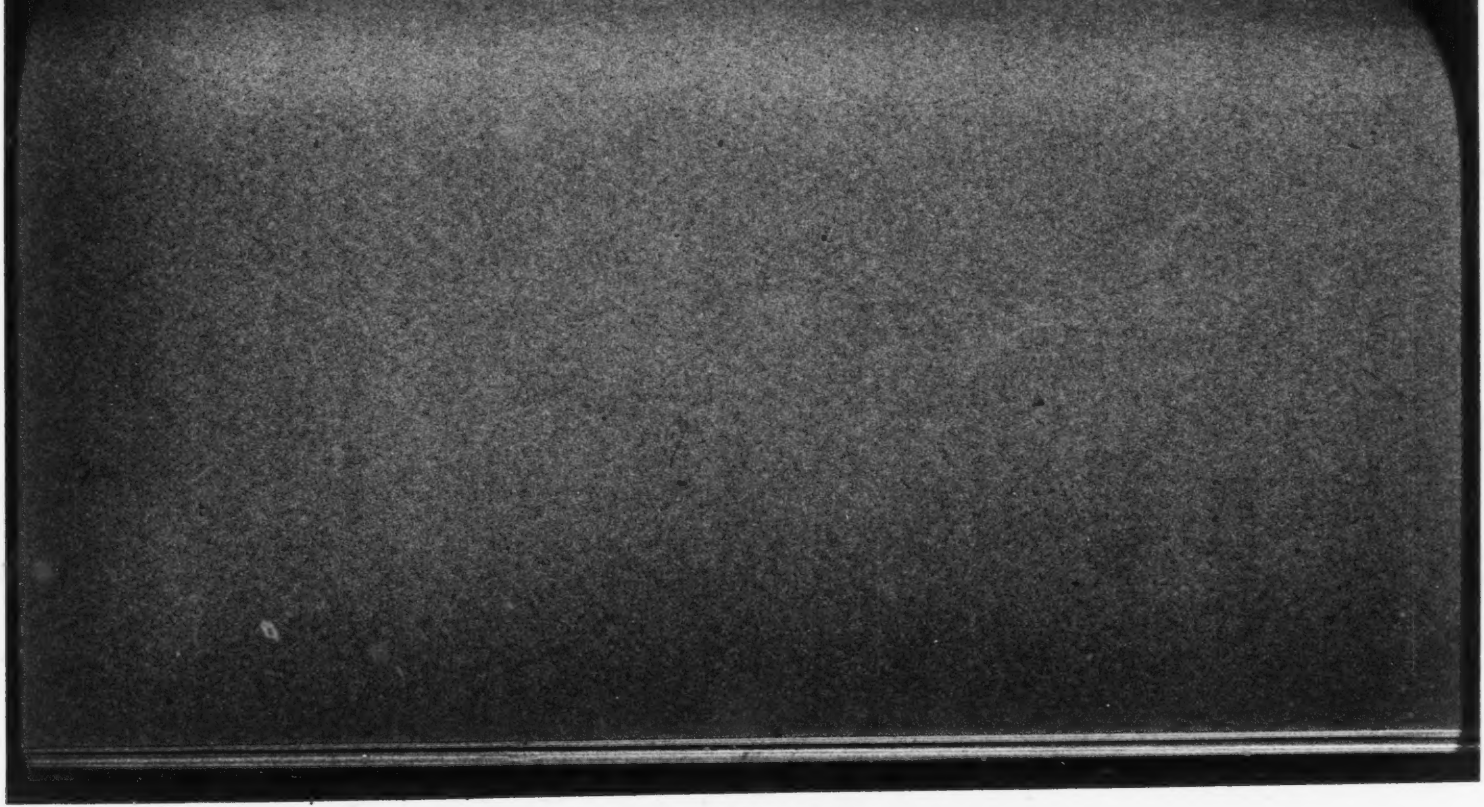
PHILIP MAURO,

Attorney for Complainants-Appellants.

C. A. L. MASSIE,

Of Counsel.

C. C. Birchmeyer, 30 to 36 Spring Street, New York.



In the Supreme Court of the United States.

NO. 614. OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainants-Appellants,

vs.

CUSENIER COMPANY, Respondent.

ROGER FOSTER, ESQ.,
A. L. PINCOFFS, ESQ.,
Attorneys for Cusenier Company.

SIRS:—Please take notice, that upon the submission to the Supreme Court of your Motion to Dismiss the Appeal herein, we shall submit in opposition thereto the annexed Answer, Cross-Motions, and Brief.

Dated, New York City, March 15, 1909.

PHILIP MAURO,
Attorney for Complainants-Appellants.

Service of the foregoing Notice and annexed Answer, Cross-Motions and Brief, is hereby admitted this 15th day of March, 1909.

ROGER FOSTER,
A. L. PINCOFFS,
Attorneys for Cusenier Company.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 614. October Term, 1908.

Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainants-Appellants,

vs.

Cusenier Company, Respondent.

Complainant-Appellant's answer and cross-motions in response to defendant-appellee's motion to dismiss appeal.

To the Honorable the Justices of the Supreme Court of the United States:

And now comes the above-named Pere Alfredo Luis Baglin, for himself and all other members of the Order of Carthusian Monks, by Philip Mauro, Esq., their counsel, and prays leave to present this their Answer to the motion of the above-named Cusenier Company to dismiss their appeal herein, and (without waiving their said Answer) prays leave to present the accompanying cross-motions.

Answer.

1. And, as Answer to the motion of said Cusenier Co., said Complainant-Appellant says that the Decree here appealed from is a FINAL decree and *not* an interlocutory decree; and

that, therefore, Defendant-Appellee's said motion should be denied.

2. And said Complainant-Appellant shows, first, that although the Bill of Complaint herein prayed for an accounting for damages as well as profits, as set out in Defendant-Appellee's motion-papers herein, yet in the Circuit Court his Honor Judge HOUGH, after further and special consideration of that very matter, *denied* the accounting save as to the "profits" of the defendant, the Cusenier Company, as will appear by Judge HOUGH'S memorandum Opinion of Nov. 26, 1907, found on page 1565 of the Transcript on file in this Court, (a copy of which Opinion is hereto annexed for convenience); that pursuant thereto the original Decree of the Circuit Court, as likewise said Decree as now amended (pursuant to the Order and Mandate of the Court of Appeals), does *not* grant an accounting of *damages*, but solely of the defendant's "*profits*"; and that said Decree likewise *grants execution* "for the amounts found due *on the accounting*",—as appears in folios 12, 51-2, and 60 of said Cusenier Company's motion-papers herein.

3. And, second, the said Complainant-Appellant is advised and believes (1) that where the "accounting" reserved by a decree is purely ministerial, and is not complicated in its nature, and does not involve any judicial action, and does not require any subsequent order of the Court,—then such decree is *final*; and (2) that the particular "accounting" directed by the Decree herein is of the nature just specified, and therefore "*final*" and *appealable*, for the following reasons:

> (*a*) Because the Master is not directed to ascertain the "damages" which complainants may have suffered, but merely the "profits" realized by defendant, which—under the maxim "*id certum est quod certum reddi potest*"—is a liquidated amount, the ascertaining of which is a purely MINISTERIAL matter of bookkeeping and arithmetic,—consisting of ascertaining the quantity of the infringing article (the liqueur or cordial purporting to be "Chartreuse")* received by the defendant, the

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*See Paragraph 2 of Decree.

price defendant paid for the same, the quantity it sold and the total price it received therefor, together with the quantity remaining in defendant's possession—all of which are matters already of record, that can be ascertained from defendant's books and documents, and without any exercise of judicial discretion ; and

(b) Because the said Decree is SELF-EXECUTING, in that it directs " that *execution issue* for " costs " and for the amounts *found due on the accounting* ", which " accounting " is to be reported by the Master, without any additional order of the Court being required (or provided for) to pass upon the said " accounting ", and without any additional order being required to obtain the Writ of Execution.

4. Wherefore the said Complainants-Appellants, in response to the motion of said Cusenier Company to dismiss their appeal, say that said motion should be denied, and they hereby request that it be denied.

Cross-Motions.

5. And, without waiving their request that defendant-appellee's motion to dismiss their appeal be denied, but insisting upon that request, and only in the event your Honors think the said request ought to be denied and think the said motion of the defendant-appellee ought to be granted,—the said Complainant-Appellant prays this Honorable Court that they (the Complainants-Appellants) may be granted leave *here* and *now* to waive the accounting provided for by the Decree below—this present instrument being intended (but only in the event of your Honors' refusal of the original request) as a waiver of such accounting ;—so that there shall remain nothing of a judicial nature to be performed under the Decree appealed from.

6. Or, in the alternative, and in the event your Honors think that the Complainants-Appellants' original request and likewise their foregoing cross-motion ought to be denied—Complainants-Appellants pray (1) that jurisdiction be temporarily restored to the Courts below, with directions that said Com-

plainants-Appellants may there amend the present Decree, by cancelling paragraph 5 thereof, and by cancelling the words "and for the amounts found due on the accounting" at the end of paragraph 6 thereof;—thereby in the Court below waiving the accounting and rendering the Decree below a *final* decree; and (2) that they (said Complainants-Appellants) may then be allowed forthwith to *reinstate* this appeal; and (3) that the same may retain its present place on the calendar of this Court, and that Complainants-Appellants may have the benefit of the Transcript of Record and other papers already on file herein.

PERE ALFREDO LUIS BAGLIN,
Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order,

By PHILIP MAURO,
Attorney.

Dated, New York City, March 15, 1909.

Judge HOUGH'S Memorandum of Nov. 26, 1907, found on page 1565 of the Transcript.

"Complainant's registered trade-marks are referred to in the decree, not because any additional rights were conferred by such registration, but only because complainant's trade-mark is 'set forth' in the trade-mark certificates referred to.

"Enjoining the defendant from proceedings obnoxious to the decision herein in the 'possessions' of the United States raises a curious question. Exactly what force the decree herein would have in the Philippines or Porto Rico need not, however, be considered; but it *is* intended to prevent the defendant, who is within the jurisdiction of this Court, from doing anything *here* tending to build up a trade in the prohibited article in 'possessions' of the United States as distinct from the United States proper. I see no reason for withholding costs. It is perfectly evident that this defendant is but the hand of the Receiver, and there is

no reason to doubt that the costs awarded, if ever paid, will be so paid out of the proceeds of the property taken away from complainant.

" I do think, however, that '*damages*', opens up too wide a field of conjecture; and that the ends of justice will be satisfied if the accounting is confined to defendant's profits; and that change has been introduced into the decree propounded by complainant.

" Nov. 26, 1907.

C. M. HOUGH,
D. J."

" [ENDORSED]—Circuit Court of the United States for the Southern District of New York.—Baglin *vs.* Cusenier Company.—Memorandum.—Hough, D. J.—U. S. Circuit Court, Southern District, N. Y.—Filed Nov. 26, 1907.—John A. Shields, Clerk."

SUPREME COURT OF THE UNITED STATES,

No. 614, OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,
Complainants-Appellants,

vs.

THE CUSENIER COMPANY,
Respondent.

BRIEF IN SUPPORT OF ANSWER AND CROSS-MOTIONS.

We contend that, for the purpose of appeal, the particular form of decree which the present appeal brings up, is in itself *final* and not "interlocutory." If our contention be correct, of course the motion to dismiss the appeal will be denied. But if our contention be incorrect, then (without prejudice to that contention) we present cross-motions for alternative relief, in order to render our decree a "final decree" (if it be not one already), so as, in effect, to maintain the appeal already lodged.

As to Defendant-Appellee's Motion.

(A) The Law.

The mere fact of a so-called "accounting" being directed by a decree, does not *in itself* render such decree "interlocutory." There is no such taint in the word "accounting" or in the *thing* itself. Where a decree is interlocutory, it is interlocutory by reason of the fact that something

judicial yet remains to be done. That is to say: where the "accounting" is of a complicated nature and requires the exercise of discretion and the weighing of evidence, it is *judicial* in its nature and the decree is "interlocutory", and therefore *not appealable;* but where a decree that is *otherwise* "final" (in that it determines the law of the case and disposes completely of the matters in controversy), yet directs an "accounting" that is purely *ministerial* —as is the case with our present Decree—such decree is "final" for all purposes of appeal. Again, where a *subsequent* Order of the Court is necessary to render effective the report of the Master upon the "accounting", the decree is "interlocutory"; but where the decree is *self-executing*—as is our present Decree —in that it contains express directions that "execution shall issue" upon the rendition of the "accounting" and for the amount found due *by* the "accounting"—then no subsequent Order of the Court is necessary, and the decree is "final" and *appealable.*

Because the "accounting" directed by the present Decree is purely *ministerial,* and because the Decree is *self-executing,* the Decree is "final" and *appealable.*

In *Beebe vs. Russell* (19 How., 283), this Court (on p. 285) said:

> "It is true, a decree may be final, although it directs a reference to a master, if all the consequential directions depending upon the result of the master's report are contained in the decree, so that no further decree of the court will be necessary, upon the confirmation of the report, *to give the parties the entire and full benefit of the previous decision of the court* (*Mills v. Hoag,* 7 Paige, 18). [Italics in original.]
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> * * * * * *
>
> "Wherever [the whole controversy] has been [determined], and ministerial duties are only to be performed, though that be to ascertain an amount due, the decree is final" (*Id.,* page 286).

In *McGourkey vs. Toledo & Ohio Central Ry. Co.* (146 U. S., 536), this Court (on page 545) has said:

> "The cases, it must be conceded, are not altogether harmonious. Upon the one hand it is clear that a

decree is final, though the case be referred to a master to execute the decree by a sale of property or otherwise, as in the case of the foreclosure of a mortgage. *Ray v. Law*, 3 Cranch, 179; *Whiting v. Bank of the United States*, 13 Pet., 6; *Bronson v. Railroad Co.*, 2 Black, 524.

* * * * * *

"It may be said in general that if the court make a decree fixing the rights and liabilities of the parties, and thereupon refer the case to a master for a ministerial purpose only, and no further proceedings in court are contemplated, the decree is final; but if it refer the case to him as a subordinate court and for a judicial purpose, as to state an account between the parties, upon which a further decree is to be entered, the decree is not final. *Craighead vs. Wilson*, 18 How., 199; *Beebe vs. Russell*, 19 How., 283."

In *Winthrop Iron Co. vs. Meeker* (109 U. S., 180), minority stockholders of the Winthrop Iron Co. brought suit against that concern and the Hematite Company and certain individuals in control of both corporations, to set aside as fraudulent a lease of the Iron Co. to the Hematite Co. by those individuals as directors. The decree adjudged the lease fraudulent, and therefore null and void; it appointed a Receiver to take charge of the Iron Co. and carry on its business and operate or lease its mines "until the further order of the court"; it *directed an accounting of defendants' profits*, under the lease; and

"the court reserves to itself such further directions as may be necessary to carry this decree into effect, concerning costs, or *as may be equitable and just*" (p. 182).

Nevertheless this Court held that decree "final" in spite of those reservations, because they were merely in order to carry out the provisions of the decree. In short, the matters reserved were purely *ministerial*.

(B) The Facts.

We respectfully submit that, under the foregoing authorities, the present decree is "final" and properly appealable.

The Judge in the Circuit Court, after his attention was specifically called to it, expressly refused an accounting of "damages", upon the asserted ground that such inquiry would be "conjectural"; and the "accounting" was limited strictly to "profits" as being *a readily ascertainable sum*,—in fact, a *liquidated sum of money*, because the amount can readily be ascertained from defendant's own records. *Id certum est quod certum reddi potest.* The "accounting" of said "profits" will be a simple matter, purely a matter of bookkeeping and arithmetic. It will be ministerial, and not judicial.

And, in the second place, when the Master shall have ascertained the amount of defendant's "profits," his duty is to report the same—whereupon, and *without further order* of the Court, "execution" for the same will at once "issue" under the 6th clause of the Decree. The taxation of costs does not render the decree interlocutory (*Fowler vs. Hamill*, 139 U. S., 549); and the issuance of the writ of execution is *not* a judicial act, but a ministerial act for carrying out the provisions of the decree (*Winthrop vs. Meeker*, 109 U. S., *supra*).

(C) Defendant-Appellee's Authorities.

There is nothing in any case cited in the brief on behalf of defendant-appellee, in conflict with our contention; those decisions are not pertinent to the facts here presented.

In *Brown vs. Swann* (9 Peters, 1), the decree on its face expressly reserves further determination, *by the Court*, and *upon further evidence*, of one of the original items of claim in dispute; the decree was therefore clearly not "final."

Barnard vs. Gibson (7 How., 649) was a patent suit. The decree granted an injunction and an accounting for *damages* sustained by complainant. The decree (1) expressly reserved the right of the Court to pass upon the Master's report; (2) it further granted to each party the right to apply to the Court for further directions; and (3) the decree expressly reserved the determination, *by the Court*, of costs and of *all other questions*. It was clearly *not* a "final" decree. (See p. 653 of the report).

In *Beebe vs. Russell* (19 How., 283), the decree directed the Master to take an accounting of rents and profits, upon *evidence* as to the profits either "received, or which could and

ought to have been received by the defendants or any of them, for any part of the premises" etc.—involving *complicated* questions that required the exercise of *judicial discretion*, etc. Such decree was clearly not "final."

In *Keystone M. & I. Co. vs. Martin* (132 U. S., 91), the decree enjoined defendant from excavating manganese mines belonging to complainant, and directed an accounting of the quantity and *value* of the ore already removed. The master was directed to take an account and to hear "evidence" and report the same to the Court (page 93). Proper determination of the question of "value" involved the exercise of *discretion*, and was *judicial* and not ministerial. Therefore, the decree was manifestly "interlocutory" only.

In *McGourkey vs. Toledo & Ohio Central Ry. Co.* (146 U. S., 536), the decree directed the master to determine, among other things, the *value* of the rolling stock as compared with certain payments, the *depreciation* of the same during a certain period, and also to "determine and report upon *all questions and matters of difference*" between the parties, relative to the same (italicized in original,—see page 546). Such determinations clearly involved the exercise of judicial discretion, and manifestly the decree was not "final."

In *California Nat'l. Bank vs. Stateler* (171 U. S., 447), an Intervenor prayed for a show-cause order, against one Chetwood the original complainant, why certain moneys *and also certain blocks of stock* should not be delivered to petitioner. In its *opinion*, the Court below dealt with the moneys, but was silent as to the stock; nevertheless it directed that the order should be entered *as prayed for*, upon condition that the respondent Chetwood should first be given a *reasonable* allowance for certain matters. The Supreme Court noted that this order "lacked finality in two particulars": first, it would still be competent to prove [by further evidence in the Court below] that Chetwood had received [and should transfer] the block of stock; and, second, Chetwood would have to prove up what he was reasonably entitled to. Clearly those two matters involved the taking of testimony, the weighing of evidence, and the exercise of judicial discretion. The *entire* controversy had not been determined; one of the two main grounds of controversy, to wit, custody of the stock, had not been passed on. Therefore the decree was *not* final.

In *Latta vs. Kilbourn* (150 U. S., 524), the decree expressly directed that the matter be remanded to the Court in Special Term, to permit the parties to offer "further proofs" etc., which involved the exercise of the judicial function in taking and in then *considering* such "further proofs." Further *judicial* action was directed; therefore the decree was not final.

In *Union Life Ins. Co. vs. Kirchoff* (160 U. S., 374), the decree of a State appellate court had remanded the case to the State court of first instance, with instructions to *take further proceedings*. Therefore, until such "further proceedings" had been taken and completed, the cause was clearly in an interlocutory stage; therefore the decree was not final.

In *Hollander vs. Fechheimer* (162 U. S., 326), complainant sued in the Special Term of the Supreme Court of the District of Columbia, to set aside an assignment as fraudulent, and to recover three sums of money, one of them a record-judgment for $1,000. The Special Term held the assignment not fraudulent, and dismissed the suit; but the General Term reversed that holding. The decree of the General Term remanded the cause, with instructions to enter judgment in complainant's favor for the $1,000 record-judgment,—and for "further proceedings" in the cause. On appeal to this Court it was held that the amount involved, $1,000, was not sufficient to give jurisdiction; and the appeal was dismissed on *that* ground; also on the further ground that, as to the other two amounts claimed, the cause was still undetermined, and therefore not ripe for appeal.

In short, the authorities cited by defendant-appellant are all, without exception, cases where some *judicial* act had yet to be performed by the Courts below; and those authorities not only are *not in conflict* with our contention, but they *strengthen* our position by showing that where *ministerial* duties only remain to be performed, whereupon the decree is *self-executing*,—then the decree is final. The Decree in the present cause is, under all these authorities, a "final decree". Therefore our Appeal is properly taken. Consequently, defendant-appellant's motion to dismiss our appeal should be denied.

Cross-Motions.

Without waiving our contention, yet out of abundant precaution, we present cross-motions for alternative relief, which, however, we withdraw in case your Honors deny the Cusenier Company's motion to dismiss our appeal. If this Court thinks that that motion ought to be granted, then (and in that event only) we urge our cross-motions as follows :

I.

Our first cross-motion is that we be permitted *here* and *now* to waive the accounting directed by the Decree below. In a Court of first instance, a complainant can at any time waive the accounting so as to be able to enter up a final decree. And we see no reason why such waiver may not be entered even in an appellate tribunal, since the defendant-appellee is not injured thereby. If this course be permitted, clearly there remains nothing of a judicial nature to be determined below. In effect, the Decree appealed from will then be a final decree (if it be not such now).

II.

If, however, this Court thinks it undesirable to establish a precedent of this nature, and therefore denies the above request, we ask, as an alternative procedure, that we may be permitted to return *temporarily* to the Courts below, in order to amend the decree in the Court of first instance, so as to place its " finality " and " appealableness " beyond question,— and then be permitted to return *forthwith* to this Court without prejudice and without the loss of our place on the calendar, and without having to follow the regular course of appeal through the Court of Appeals.

It is clear that, at any time before an appeal has been argued and submitted on the merits, an appellant can withdraw his appeal ; it is likewise evident that, after returning to the Circuit Court, and while that Court has control over its "interlocutory " decree, the complainant (who has obtained a narrow injunction and an accounting) can, at any time, forego the accounting and obtain a *final* decree ; and it is

likewise evident that thereupon he can bring an appeal (a *new* appeal) to *broaden* the scope of the injunction granted by such "final decree." But in the present cause, such new appeal, although taken from such *final* decree of the Circuit Court, would have to be taken in the first instance to the Court of Appeals, which, in the present case, has already denied the broader injunction we desire; so that it is naturally to be expected that the Court of Appeals would refuse to entertain such new appeal, on the ground that the matter is even now *res adjudicata*. We would then, perhaps, have to apply to this Court for a mandamus directing the Court of Appeals to entertain formally our said new appeal to that Court and to enter a formal order affirming the "final decree" rendered in conformity with the views hitherto expressed by the Court of Appeals, in order to enable us thereafter to bring an appeal, from such formal order, to this Court. All of which results in a complicated, round-about and perilous procedure.

Therefore, under the maxim that "Equity looks upon that as done which ought to be done," we present this our alternative cross-motion, viz.: that this Court make provision whereby we can in effect maintain here, without prejudice, the appeal already lodged. Of the maxim just quoted, a text writer says:

> "This maxim is acted on in some cases (as in the case of agreements) in favor of persons who have a right to ask that acts might be done, so as virtually to place them, as near as may be, in the same advantageous position as if those acts had been done in the way in which, and at the time when, they ought to have been performed."
>
> Ingersoll's Smith's Manual of Equity, Second American Edition (Washington City, 1878), p. 24, Sec. 41.

Conclusions.

First, we respectfully ask that this Court deny the motion of the defendant-appellee to dismiss our appeal.

Second, if this Court thinks our request should be denied, we respectfully ask that we be allowed here and now to waive the accounting directed by the decree appealed from.

Third, if this Court thinks the second request should likewise be denied, we respectfully ask (*a*) to withdraw our appeal without prejudice, and with leave to amend the decree in the Courts below in the manner stated in our cross-motion, and (*b*) that we may then forthwith reinstate our appeal here and be allowed to retain our present position on the calendar of this Court and avail ourselves of the transcript, etc., already on file here.

Fourth, in case your Honors think all our requests should be denied, we call attention to our petition for *certiorari*, which, out of abundant precaution, we are presenting herewith.

Respectfully submitted,

PHILIP MAURO,

C. A. L. MASSIE,

Of Counsel for Complainants-Appellants.

Dated New York City, March 15, 1909.

Supreme Court of the United States,

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

vs.

THE CUSENIER COMPANY,

Respondent.

Notice.

TO THE CUSENIER COMPANY, Respondent:

Please take notice that on Monday, the 12th day of April, 1909, at the opening of Court on that day (or, if motions are not then heard, at the next succeeding motion day), the annexed Petition for Writ of *Certiorari* will be submitted to the Supreme Court of the United States, at the Court Rooms thereof, in the City of Washington, D. C.

In support of said Petition a Brief will be filed whereof a copy is hereto annexed.

PHILIP MAURO,
Attorney for Petitioners.

Service of the foregoing Notice and of the annexed Motion, Petition and Brief, is hereby admitted this 17th day of March, 1909.

ROGER FOSTER,
A. L. PINCOFFS,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,
Petitioners,

vs.

THE CUSENIER COMPANY,
Respondent.

Motion.

And now come Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order, the above-named Petitioners, by Philip Mauro, their attorney, and move this Honorable Court, upon the certified Transcript of Record herein, and upon the annxed Petition, for a Writ of *Certiorari* directed to the Honorable the Judges of the United States Circuit Court of Appeals, within and for the Second Judicial Circuit, commanding said Court of Appeals to certify and bring before this Honorable Court the above-entitled cause,—lately before said Court of Appeals, wherein these Petitioners were Complainants-Appellees and the Respondent herein was Defendant-Appellant,—for such further proceedings and for such relief to Petitioners as to this Honorable Court may seem just.

PERE ALFREDO LUIS BAGLIN,
Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order.

By PHILIP MAURO,
Their Attorney.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,
Petitioners,

vs.

THE CUSENIER COMPANY,
Respondent.

Petition.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petition of Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for himself and all the other members of the said Order, respectfully shows as follows:

1. That the Order of Carthusian Monks, known also as the Congregation of or Order of the Chartreux, is a religious Order of voluntary association, which, up to the year 1903, had maintained almost uninterruptedly for several hundred years its main chartreuse or "Mother House" (the abode of its Superior-General) near Voiron, in the Department of Isère, Republic of France,—the exact location of said main chartreuse being on the demesne now known as "La Grande Chartreuse."

2. That the said Carthusian Monks have for several hundred years last past carried on the manufacture of a certain liqueur or cordial, known throughout the world

as "Chartreuse", which said liqueur or cordial has been and now is manufactured exclusively by them, in accordance with a secret recipe or formula whereof the said Carthusian Monks have been and now are the sole proprietors, and which, by reason of its excellence, the care and skill exercised in making it, and the good repute of its makers, has become widely and favorably known, and is, and always has been, known by the trade-name "Chartreuse."

3. That in the year 1903, in consequence of the enforcement by the French Government of a legislative enactment known as the "Associations Act" of July 1, 1901, the said Carthusian Monks were expelled from French territory, and thereupon they did establish at Tarragona, in the Kingdom of Spain, their factory for the continuance of their ancient business of making the liqueur or cordial known as "Chartreuse"; and from that time to the present, said manufacture of Chartreuse liqueurs has been (and still is being) carried on in accordance with said original secret recipe or formula (which is still the exclusive property of said Carthusian Monks); and in fabricating said liqueurs at their factory in Tarragona said Carthusian Monks have employed identically the same ingredients as have been used for time immemorial in fabricating the same.

4. Said liqueur or cordial has been commonly packed in bottles of peculiar design having conspicuously ground therein the word "Chartreuse" together with distinctive markings and ecclesiastical symbols which have been adopted by the Order of Carthusians, to wit, a segmented circle surmounted by a cross and seven stars, said bottles also bearing distinctive labels whereon is found the word "Chartreuse" and the facsimile of the signature of L. Garnier, who was, a half century or over ago, the "Procureur" of said Order. A reproduction of certificate of Trade Mark Registration No. 3,989, September 12, 1876, opposite this page, shows the general style of bottle and labels used by petitioners.

5. That in the year 1876, the said Order, by its then Procureur, Frère (that is to say, "Brother") Marcel Marie Grézier, caused the said name "Chartreuse"

FRÈRE MARCEL MARIE GREZIÉR, PROCUREUR OF TH
CONVENT OF THE GRANDE CHARTREUSE.

LIQUEMOR CORDIAL.

No. 3,989. Registered Sept. 12. 1876.

LIQUEUR FABRIQUÉE
A LA Gde CHARTREUSE.
J. Garnier A

LIQUEUR FABRIQUÉE
A LA Gde CHARTREUSE
J. Garnier B J. Garnier

J. Garnier D

L

GDE CHARTREUSE



Witness:
John Gardner

Marcel Marie Grézier.
By his attorneys

to be registered in the United States Patent Office on behalf of said Order, as evidenced by certificate of registration No. 3377, dated January 25, 1876; and that in the year 1884, said Order caused a re-registration of said mark by its Procureur (Frère Grézier), as evidenced by certificate No. 0,897, dated January 29, 1884.

6. That, after the migration of petitioners from France as aforesaid, the Procureur of the Republic of France addressed to the Civil Court of First Instance of Grenoble, France, a Petition praying for the appointment of one Henri Lecouturier as a "sequestrating administrator and liquidator of the property of the Congregation called des Chartreux, not only the properties situated and held at the principal monastery at St. Pierre des Chartreuse, but also those held by the said Congregation in France at its different establishments"; and thereupon the said Court at Grenoble, by a judgment rendered March 31, 1903, did appoint the said Lecouturier as administrator and liquidator of the property of the Congregation then in France; and by virtue of certain other subsequent judgments and decrees of the French Courts, the property of the Monks then in France was seized by said Lecouturier; and the latter thereupon contracted with a manufacturer of distilled liquors, one Cusenier, to manufacture and to sell as "Chartreuse" a liqueur or cordial, and assumed to authorize said Cusenier to market the same in bottles identical in appearance with those long used by your petitioners, and under labels and other markings so nearly as possible identical with those theretofore used exclusively by the said Monks in the marketing of their genuine "Chartreuse".

7. The said Lecouturier, or his concessionaire the said Cusenier, thereafter assumed to appoint one Jules Aubry, who in turn assumed to appoint the Cusenier Co. (respondent herein), of which Company said Aubry was Vice-President, to be the sole agent for the United States and Canada for the sale of the cordial or liqueur manufactured and put up by the said Cusenier in France, as aforesaid.

8. That thereafter, namely, on January 4, 1905, the said Aubry or his representative, the respondent herein, being

about to import a large number of cases of the so-called "Chartreuse" into this country, and having made shipment of the same to this country, your petitioners filed in the Circuit Court of the United States, for the Southern District of New York, a bill of complaint praying for the usual injunction and accounting; that a motion for preliminary injunction was brought within a week thereafter, and on January 11, 1905, a broad and comprehensive injunction order was issued by Hon. E. HENRY LACOMBE, Circuit Judge, against the respondent herein; thereafter, the respondent herein appealed to the Circuit Court of Appeals, for the Second Circuit, and the cause coming on in due time for argument, the said Court of Appeals, by a majority opinion, modified the injunction granted by Judge LACOMBE at Circuit, on the ground that such sweeping relief should not be given on proofs so meagre as those before the Court at that time; but the late Judge TOWNSEND dissented from the majority opinion of the Court of Appeals and filed an opinion to the effect that the injunction as originally granted by Judge LACOMBE should not be modified, saying (141 Fed. Rep., 497, 499) there was

> "no uncertainty as to the material facts upon which the injunction was granted, namely, the validity of the trade-name "Chartreuse," complainants' title and long-continued possession, and the infringement by defendant, and deception of the public. The only doubts raised are as to defendant's rights even in France."

9. Thereafter, full proofs having been taken, both in this country and abroad, the cause came on for final hearing at Circuit, and his Honor Judge HOUGH sustained the bill of complaint, and granted the relief therein prayed, concluding his opinion by saying that to do otherwise "by every canon of American law" would "amount to confiscation." A decree in accordance with the opinion was thereupon entered and an injunction order issued which was substantially identical with the injunction originally issued by his Honor Judge LACOMBE on motion for preliminary injunction.

10. Thereupon the respondent again appealed to the United States Circuit Court of Appeals, for the Second Cir-

cuit, from the decree granted by Judge HOUGH ; and, the cause coming on for argument, the said Court of Appeals in due time handed down its opinion affirming the decree appealed from, except as to the paragraph numbered 4 of said decree. The paragraph numbered 1 of said decree, as affirmed by the Court of Appeals, reads as follows (Trans., p. 1567) :

> " 1. Adjudged, Ordered and Decreed that the word symbol ' Chartreuse ', as applied to liqueur or cordial, is a good and valid trade-mark, and in this country has been and is now the sole and exclusive property of the Carthusian Monks or Fathers (' Peres Chartreux ') complainants herein; and that the said word symbol, ' Chartreuse ', accompanied by the fac-simile signature of L. Garnier, as set forth in U. S. Trade-mark Certificate No. 3377 registered in the U. S. Patent Office, January 25, 1876 (re-registered January 29, 1884, as No. 10,897) and in U. S. Certificate No. 3989, registered September 12, 1876 (re-registered January 29, 1884, as No. 10,-898), and as appearing upon ' Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co.,' constitute good and valid trade-marks, and in this country have been and now are the sole and exclusive property of said complainants the Carthusian Monks or Fathers (' Peres Chartreux ') ; and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants."

Then, after thus holding that the trade-mark " Chartreuse " was a good and valid trade-mark, and that in this country it was the *exclusive* property of the Carthusian Monks, the Court of Appeals nevertheless proceeded to modify the paragraph numbered 4 of the decree appealed from so as to allow the respondent herein to use the trade-mark " Chartreuse ", on liqueur or cordial sold by respondent, if (Trans., p. 1591)

> " so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants ",

and also to allow the respondent herein to make use of the peculiarly shaped bottle which the Carthusian Monks had used for many generations as a package for their liqueur or cordial, —and this after saying in their opinion (Trans., p. 1589) :

> " A purchaser is compelled to rely upon external appearances and if he wanted the Monks' product he would be justified in thinking he had procured it if the *bottle were identical in appearance* with that which contained the liqueur of years ago when he first became acquainted with it " (our italics).

But the said Court of Appeals awarded a perpetual injunction against the use by the respondent herein of the fac-simile signature of L. Garnier, or any of the above specified details of the trade-marks referred to, or from in any manner dealing, within this country, in

> " any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any label or symbol like or substantially similar to those appearing on ' Complainants' Exhibit Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

11. The Court of Appeals in their said opinion suggested two forms of label, of which the Court said they could " see no reason why the defendant should not be permitted " to use them, " printed in any language." The second of these labels proposed by the Court of Appeals begins with the words " Liqueur made at the Grande Chartreuse,"—the *identical* words which the Carthusian Monks have for generations used on their old labels. It is true that these words as used by the Carthusian Monks were printed in French (" Liqueur Fabriquée à la Gde. Chartreuse "), but the Court of Appeals says that the defendant may use either of these proposed labels " printed in any language ". (Trans., p. 1590.)

12. Your petitioners submit that, if the respondent be permitted to use the word "Chartreuse", if it be permitted to use the peculiarly shaped bottle of the Carthusian Monks, and if in addition to this it be permitted to use the identical words ("Liqueur Fabriquée à la Gde. Chartreuse") the only conspicuous words on the old labels of the Carthusian Monks the admitted property rights of petitioners will be seriously damaged, and full opportunity will be afforded to all unscrupulous dealers to sell the liqueur of this respondent as and for the original and genuine Chartreuse of the Carthusian Monks; in fact, the rights granted to respondent under such decree would amount in substance to the right to appropriate and use the recognized trade-mark of the Order of the Chartreux.

13. At different times, seven United States Judges have heard argument and written or concurred in opinions on the subject matter of this litigation; three Judges (LACOMBE, TOWNSEND, HOUGH, JJ.) of the said seven were most emphatic in their opinions that the Bill of Complaint should be sustained and the prayers thereof granted; one of said Judges (WALLACE, J., who sat in the Court of Appeals on the appeal from the order granting a preliminary injunction) declined to pass finally on the case on the meagre proofs (*ex parte* affidavits) then before him; two of said Judges (COXE and WARD, JJ., on appeal after final hearing) held that the Bill should be sustained but that the decree should be modified as herein before stated; and the last of said seven Judges (NOYES, J.) concurred in the result obtained by the holding of COXE and WARD, JJ., but arrived at that result by a process of reasoning radically different from that of the majority of the said Court of Appeals.

14. From the foregoing recital it will be seen that this cause involves questions of unusual gravity and importance,—questions involving the interpretation of the trade-mark laws of the United States and of the protection afforded thereunder; involving also the effect upon a business, good-will, and trade-marks existing in the United States of the French law known as the "Associations Act"; also the effect upon American trade-marks and good-will of the decrees of French Courts, and the

actions of the receiver appointed thereunder; also the effect upon the same property-rights of the transfer of the factory of the Monks from France to Spain, and of the changes made by them in their bottles and labels; and involving also the interests of the American public to be protected from fraudulent substitution of an imitation article for that with which the trade-mark "Chartreuse" has been for several generations associated (*Medicine Co. v. Wood*, 108 U. S., 218, 223).

WHEREFORE, in order that the foregoing and other matters may be properly considered and adjudicated, your petitioners pray that this Honorable Court will grant its writ of *certiorari* directed to said Circuit Court of Appeals, for the Second Circuit, requiring the complete record of this cause in said Court to be certified to this Court, and that this Court will thereupon proceed to correct the errors herein complained of, and reverse the decree of said Circuit Court of Appeals in so far as the decree of the Circuit Court is modified thereby, and remand said cause, and give to your petitioners such other and further relief as the nature of the case may require, and to the Court may seem proper in the premises.

And your petitioners, having already taken an appeal to this Court from the said decision of the Circuit Court of Appeals for the Second Circuit, but being uncertain whether they are entitled to an appeal as matter of right, therefore, they further pray the Court to direct that the transcript of the record herein, filed under said appeal, be accepted as the return to the *certiorari*.

And your petitioners will ever pray.

PERE ALFREDO LUIS BAGLIN,
Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order.

By PHILIP MAURO,
Their Attorney.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,
Petitioners,

vs.

THE CUSENIER COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION.

1.

Importance of the Question Involved.

This case undoubtedly presents questions of unusual gravity and importance.

The majority opinion of the Court below says:

> "We are thus confronted with a situation which is *sui generis*."

The case involves a novel and important question arising under the trade-mark laws of the United States.

It involves a question as to the extra-territorial effect of the French "Associations Act" of 1901, and as to the extra-territorial effect of judicial acts of the Courts of France taken in pursuance thereof.

It presents a notable conflict of opinion on these, and other questions, between the several learned and able judges of the lower Courts, who have considered and passed upon them; as

well as a conflict of opinion between United States judges and judges of the High Court of Chancery of England, who have had the same questions to decide.

It presents questions which have been litigated in every civilized country of the world.

It involves a trade-mark which has enjoyed world-wide celebrity for several generations, and in which the American public has a great interest.

In fact it would be difficult to discover or to imagine a case between private parties presenting greater claim to an adjudication by this Court.

2.

The Subject-Matter.

Putting aside all details, (although some of them are important), the principal property-right in controversy is the right to the use, in this country, of the word-symbol "Chartreuse" (and its derivatives, as "Chartreux") as a trade-mark for cordials and liqueurs.

All the Courts and judges, both in England and the United States, are agreed that "Chartreuse", even if primarily geographical (as to which authorities differ) is not now a mere "place-name", but is, and has been for many generations, a valid trade-mark, owned by the Carthusian Monks, and used by them, the world over, as a trade-mark for liqueurs fabricated by them. The Court below adjudged (164 Fed. Rep., 25, 26; Trans., p. 1582):

> "FIRST: That the word symbol 'Chartreuse', as applied to liqueur, is a good and valid trade-mark in this country and has been and now is the sole and exclusive property of the Carthusian Monks, who are the complainants herein, and that the label as set forth in the United States trade-mark certificate No. 3377 constitutes a valid trade-mark in this country."

The lower Courts and judges are also agreed, (as also the English Court of Appeals has decided) that the liqueurs so made and sold by the Carthusian Monks under the general trade-name "Chartreuse" were fabricated according to a secret formula, which is still the property of the Monks, and which they carried with them when they migrated from France and set up their factory at Tarragona in Spain.

3.

Effect of the Decision Below.

The decision below, while expressly affirming the judgment of the Circuit Court so far as the latter holds that the word-symbol "Chartreuse" is a good and valid trade-mark in this country, and that it "has been and now is the *sole and exclusive* property of the Carthusian Monks", nevertheless gives to the defendant *the right to use that very property*, including even the shape of bottle and the general style and color of the old labels (omitting only the ecclesiastical symbols and facsimile signature) provided said trade-mark and accessories are "so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants."

But it goes without saying that, if defendant be permitted to use the trade-mark "Chartreuse" at all, it is just to that extent granted the right to use trade-mark property which is adjudged to be the sole and exclusive property of complainants. And inasmuch as the only office of a trade-mark is to identify the product of a certain manufacture, it is difficult to see how the use thereof by a competitor could have any other possible effect than to mislead purchasers. Unless it have that effect its use could be of no advantage to such competitor.

It is obvious, we think, that whatever advantage defendant may derive from the permission to sell its liqueurs to the American public as "Chartreuse," must of necessity entail a corresponding injury to complainants.

It is further apparent that, under such a decree, the thing

really in dispute, and which has great commercial value, although *adjudged to be complainants' exclusive property*, is *virtually awarded to defendant.*

4.

Grounds of Decision Below.

It is important to note how the learned Judges of the Court below reached the result above stated.

Primarily, the result is attributable to the unusual, and somewhat complicated, state of facts with which the Court had to deal. Among the prominent facts are:

1. The "Associations Act" of 1901, in consequence of which the Monks were expelled from French territory. Was it extra-territorial in its operation, or strictly an act of domestic regulation and "police"?

2. The appointment of a receiver ("liquidateur") to take possession of property left in France by the Monks. Was this for the purpose of *conservation* of property which the owners, by reason of their absence and disability, could not protect and administer, or was it *confiscatory?*

3. The action of the receiver in not merely taking possession of the abandoned property (buildings, stills, machinery, etc.), but of *starting the manufacture of liqueurs*, and marketing the same in France under the old trade-marks and labels of the Monks. Assuming this to have been sanctioned by the French Courts, did this confiscatory proceeding affect the complainants' trade-mark rights and the good-will of their long established business in the United States?

4. The migration of the Monks, and the establishment of their factory at Tarragona, where the same liqueurs, composed of the same ingredients, fabricated according to

the same secret formula, are now being manufactured by the Monks. Did this constitute the abandonment of their old business and the inauguration of a new business; or was it the continuation of their ancient business? In other words, has a manufacturer the right to remove his factory from one country to another? And if he be a foreign manufacturer, does such removal (whether voluntary or enforced) affect his trade-mark rights and the good-will of his selling business in the United States?

5. The discontinuance of the use by the Monks of their old style bottles and labels, while continuing the use of the trade-mark "Chartreuse", in its derivative form "Chartreux". Is this an "abandonment" of their rights to the old labels and accessories? Does it give others the right to use them in competition with complainants? Particularly does it give others the right to use the trade-mark "Chartreuse"?

As to the effect of these unusual facts a great contrariety of opinion has been expressed.

(A.) In the Court below the majority opinion holds (1) that the Monks, by the discontinuance of use of their old labels, have *de facto* abandoned them; and (2) that their removal from the monastery known as "La Grande Chartreuse" precludes them from stating on their labels that their liqueur is "made at the Grande Chartreuse".

Even if these propositions were conceded, it would by no means follow that others could be permitted to adopt those labels and marks and use them in competition with the Monks to their injury and the loss of their business.

But we submit:

1. Discontinuance of the use of property by the owner thereof is not *per se* an abandonment of such property. It is, moreover, a strange conclusion for the lower Court to reach that complainants have abandoned property which they have brought suit to protect, and that such abandonment results from events which have occurred *since that suit was brought.* Abandonment is a matter of intent; and the bringing of suit to protect property the moment a trespass is threatened (and in this case even before a single act of trespass was committed) is the best possible refutation of the idea of abandonment.

2. Complainants have *not* discontinued the use of the trade-mark " Chartreuse," which is the important thing involved, and is that which the decree below gives defendant the right to use, under restrictions.

3. Complainants have not, in this country, wholly discontinued the use of the old labels (Trans., p. 639, Qs. 16, 17).

4. The fact that defendant sells a liqueur made at or near the place where the monastery of La Grande Chartreuse was located gives no right whatever, as is well-settled law in this country, to the use of the trade-mark " Chartreuse." Such use has no value to defendant except it be proportionately an injury to complainants, the admitted and adjudicated owners of the trade-mark " Chartreuse." By no process of reasoning can the fact be disguised that the sale of liqueurs as " Chartreuse " is an *infringement* of the rights of the recognized owners of that trade-mark. If permitted by the Courts it is simply a *judicially authorized* infringement.

(B) The conclusion of Judge NOYES of the Court below is based squarely upon the proposition that the action of the French Courts invested the receiver, and through him his concessionaire, the defendant, with the right to sell its liqueurs in this country as " Chartreuse ". Judge NOYES said (164 Fed. Rep., 25, 36; Trans., p. 1599):

> " It is my opinion that the business of the Congregation of the Chartreux was located in France; that the good-will followed the business, and that the trade-mark ' Chartreuse ' followed as an incident to the good-will."

This was substantially the view reached by the English judge (Mr. Justice JOYCE) in the lower English Court. But the English Court of Appeals reversed that decision, and expressly adopted, with words of highest approval, the decision of our Judge HOUGH.

Lord ALVERSTONE (Lord Chief Justice of England) said:

> " It seems to me that when this case is understood the view taken by the American Court in the Judgment, which I think was singularly concise and well-reasoned, is absolutely right."

5.

Opinions of Other Judges.

Judge LACOMBE stated the essence of this case and disposed of it in a few words, saying (156 Fed. Rep., 1015):

> "The French Government may, no doubt, seize such property of the Carthusian Monks as it may find in France, including trade-marks; but I am at a loss to see how it can give to any one, liquidator or not, the right to sell in this country Chartreuse cordial not made by the said Monks, packed, marked, and labeled with the marks and devices which for more than a generation have identified and guaranteed their product. Maybe the Monks have lost the right to use their old trade-marks, but it does not follow that some one else can use them here on goods which they do not make. To offer for sale cordial made by Mr. Lecouturier as cordial made by the Monks of La Grande Chartreuse is a fraud upon the public in this country, which even the authority of the French Government cannot permit."

Judge TOWNSEND in his dissenting opinion (*i. e.*, dissenting from the proposition that the showing in support of motion for preliminary injunction was insufficient) said (141 Fed. Rep., 497, 500):

> "The attempt to palm off on the American public a product of some decoction, the composition of which is unknown, manufactured by an assignee of a French liquidator, by the appropriation of complainant's labels, which falsely indicate to the American public that it is purchasing a well known product made by a secret process by this Order of Monks, which labels are stamped with a counterfeit of the signature of the Order, is an attempt by fraud to make a gain out of the confidence of the public in the individual skill of the members of said Order, and to appropriate, in violation of law and without consideration, that intangible and

incorporeal, but no less sacred, right of property, the good will of the complainant."

Judge HOUGH, whose decree after final hearing was modified by the Circuit Court of Appeals, said (156 Fed. Rep., 1016, 1018; Trans., p. 1563):

> "This American property [*i. e.* trade marks and good will] did not pass to the receiver, and could not inure to his benefit or that of his assignee by any proceeding taken against complainants in France."

And again:

> "A business does not inhere in a place or a building, nor depend for validity upon continuance in one locality or country. When the Monks fled from the rigor of French law they took their business with them; the testimony shows that it exists today in Spain, and, while they continue to transact it there or elsewhere, no law but that of the United States can deprive them of the lawful fruits thereof in this country."

Speaking of the proposition that the change of labels by the Monks deprived them of their trade-mark rights, Judge HOUGH said (Trans., p. 1563):

> "The defense now under consideration is affected by the same fallacy as the first, viz: the thought that the liquidateur is the *successor* of the monkish industry. Nothing could be further from the truth. He and all claiming under him are *rivals in business*, enjoying the advantage of governmental protection in the country of his appointment." (Our italics.)

This view was also adopted by the English Court of Appeal. Lord Justice KENNEDY in his concurring opinion said:

> "I do not think that more can be said with regard to what took place in France than this which is put in the Judgment of the American Court, and I think put

as well as it could be, and that is that the Liquidator and all claiming under him are *rivals in business* enjoying the advantage of Government protection in the country of his appointment." (Our italics.)

We might go further and refer to the decisions of the French tribunals to show that the latter not only refrained from including foreign trade-marks and rights in their decrees, but expressly declared that such decrees were limited to the French trade-marks; but enough has been stated to show that the questions involved in this case are of great importance, and are of interest to the public as well as to the parties.

6.

The petitioners have brought the case into this Court by appeal; but, being uncertain whether they are entitled to an appeal to this Court as a matter of right, they present this petition for writ of *certiorari*, following the practice sanctioned in *Hurst v. Hollingsworth*, 94 U. S., 111, and *Security Trust Co. v. Dent*, 187 U. S., 237, 239; and we ask that, as in the last cited case, the Court will direct that the transcript of the record herein filed under the appeal, be accepted as a return to the *certiorari*.

Respectfully submitted,

PHILIP MAURO,
Attorney for Petitioners.

Supreme Court of the United States,

OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all the other Members of said Order,
Petitioners and Cross-Respondents,

vs.

THE CUSENIER COMPANY,
Respondent and Cross-Petitioner.

Answer to Cross-Petition.

The answer of the above-named PERE ALFREDO LUIS BAGLIN for himself and all other members of the Order of Carthusian Monks to the cross-petition of THE CUSENIER COMPANY for a cross-writ of *certiorari*, respectfully shows as follows :

I.

That the said cross-petition sets forth nothing material, or necessary or proper to be decided by this Honorable Court, that has not already been brought before this Court by the cross-respondents' petition for *certiorari*. Wherefore it is unnecessary and improper to grant said *cross*-petition.

WHEREFORE, since all the alleged "important questions" recited by said cross-petition are either *no longer open questions*, or are *not based on any evidence in the case*—there is presented by said cross-petition no material or proper question for determination by this Court.

Consequently, the cross-petition should be denied.

Dated New York City, April 2, 1909.

PERE ALFREDO LUIS BAGLIN,
Superior-General of the Order of Carthusian Monks,
for Himself and all of the other Members of said Order,
By PHILIP MAURO,
Attorney for Cross-Respondents.

DEC 6 1910
JAMES H. McKENNEY,

Supreme Court of the United States.

No. 28.—OCTOBER TERM, 1910.

PÈRE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order,
Petitioners and Cross-Respondents.
(Complainants in Circuit Court),

vs.

THE CUSENIER COMPANY,
Respondent and Cross-Petitioner,
(Defendant in Circuit Court).

On Writ and Cross-Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF OF ARGUMENT FOR PÈRE ALFREDO LUIS BAGLIN, &C.

PHILIP MAURO,
C. A. L. MASSIE,
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Counsel for Père Baglin, &c.

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Prior Decisions in Père Beglin, Superior-General, etc., against the Cusenier Company.

Judge Lacombe, on motion for preliminary injunction,

156 Fed. Rep., 1015.

Judges Wallace, Townsend and Coxe, on appeal from order granting preliminary injunction,

141 Fed. Rep., 497.

Judge Hough, at final hearing on full proofs,

156 Fed. Rep., 1016.

Judges Coxe, Ward and Noyes, on appeal from decree awarding injunction and accounting,

164 Fed. Rep., 28.

United States Supreme Court, on petition and cross-petition for writ of *certiorari*,

53 Law. Ed., 1071.

Judge Hough, holding defendant in contempt,

Trans. of Contempt Proceedings, p. 15.

Circuit Court of Appeals, on contempt proceedings,

178 Fed. Rep., 1016.

United States Supreme Court, on contempt proceedings: "Consideration of the petition for an additional writ of *certiorari* herein postponed to the hearing of the principal case." January 10, 1910.

INDEX.

PAGE

STATEMENT 1
Recital of Facts 2
Contempt Proceedings Herein 9
ARGUMENT 10
Matter in Dispute is Ownership of the Trade-Mark "CHARTREUSE" 10
The French "Associations Act" of 1901 "a Law of Exception and Police" 12
The Office of a Trade-Mark 13
Medicine Co. vs. Wood, 108 U. S., 218 13
Defendant's Use of the Trade-Mark "Chartreuse" Violates the Fundamental Law of Trade-Marks 14
Defendant's Liqueur is of Recent Origin, its Formula Having Been Devised in 1904 15
Defendant's Conduct Proves that word "Chartreuse" Indicates *Personality of Manufacturers*, rather than Place of Manufacture 20
Defendant's Business not a Continuation of Complainants' Business 21
French Court at Grenoble has Decided that Product Sold by Defendant is not Genuine Chartreuse 25
THE TRADE-MARK "CHARTREUSE" 26
Common Recognition 26
Falk vs. Trading Co., 180 N. Y., 445 26
Registration 27
Adjudications 27
Grezier, Procureur, vs. Girard 27
Bauer & Co., vs. Order of Carthusians, 120 F. R., 78 27

PAGE

The Significance of the Word "Chartreuse" is not Geographical 29
Geographical Names May Constitute Lawful Trade-Names Under the Circumstances of the Present Case .. 30
Wotherspoon vs. Currie, L. R. 5, H. L., 508 30
Lawrence Co. vs. Tenn. Mfg. Co., 138 U. S., 537 30
Scriven vs. North, 134 F. R., 366 30
Thompson vs. Montgomery, 41 Ch. D. 35 31
Reddaway vs. Banham 31
Shaver vs. Heller & Merz Co., 108 F. R., 821 31
Buzby vs. Davis, 150 F. R., 275 32
Kathreiner's &c. vs. Pastor Kneipp etc., 82 F. R., 321 32
Siegert vs. Gandolfi, 149 F. R., 100 33
Bauer vs. Siegert, 120 F. R., 81 33
Complainants' Right of Ownership 33
Washburn vs. Wall Paper Co., 81 F. R., 17 33
The Right to Transfer Factory from Place to Place is an Incident of Ownership 35
Attempt of Liquidator to Exercise Ownership Over Foreign Trade-Marks has been Disapproved by the French Courts 37
The French Law of 1901 and Decrees of French Courts Give no Color of Authority to Defendant to Use Trade-Marks of Complainants in United States 39
"Compagnie Generale des Alumettes" Case 42
Regarding New Labels Employed by Complainants and the Defense of Abandonment 44
The Decision of the Circuit Court of Appeals Herein 49
Questions of Fact Raised by the Proofs 53
Defendant's Contentions that Certain Plants Grow only in the Vicinity of the Old Convent 53
Defendant's Contention that its Liqueur Closely Resembles in Taste the Original "Chartreuse" 53
Defendant's Efforts to Obtain Plants Used by the Monks 56
Regarding the Similarity of Defendant's Liqueur to the Original Chartreuse 57
Worden vs. Cal. Fig Syrup Co., 187 U. S., 516 58
As to the Use of Plants in Dry or Green State 58
Testimony Taken in United States 59

PAGE

Complainants' Exhibit, Aubry-Cusenier Co. Circular Letter 59
Sent Generally Throughout the Country 59
Letter is Absolutely Misleading 60
The Contempt Proceedings 61
Conclusion 63

APPENDIX A.

Judgment of the British House of Lords 64
Opinion of Lord MACNAGHTEN 64
Opinion of Lord SHAW of Dumfermline 67
Opinion of the Lord CHANCELLOR 74

APPENDIX B.

Judgment of the British Court of Appeal 75
Opinion of the Lord Chief Justice (Lord ALVERSTONE) .. 75
Opinion of Lord Justice BUCKLEY 84
Opinion of Lord Justice KENNEDY 89

APPENDIX C.

Order Granting Injunction in *Grezier* vs. *Girard* 93

APPENDIX D.

Review of Judgments Rendered in France : 94
Judgment of the Civil Court of Grenoble of March 31, 1903, on Petition of Procurer of Republic for Receiver of Monks' Property *in France* 94
Order in Chambers of May 17, 1904, giving Liquidator Right to Seize Property in France ; Protection from Infringement of Trade-Marks its Chief Object 95
Judgment of Civil Court of Grenoble of April 23, 1904, holding Rey to be Interposed Person, and stating the Monks *Possessed a "Manufacturing Secret"* 97
Judgment of Court of Appeals of Grenoble of July 19, 1905, Affirming the Civil Court 98

PAGE

Order in Chambers of Feb. 15, 1905, Extending Powers of Liquidator 100

Judgment of the Court of Appeals of Grenoble of Dec. 12, 1905, *Annulling* Above Order 100

Judgment of the Court of Appeals of Grenoble of March 27, 1906, on Liquidator's Request for Interpretation of Judgment of April 23, 1904: Holds *that the Question of Foreign Trade-Marks had Never Been Before the Court* 101

Decisions of the Court of Cassation of July 31, 1906, Affirm Civil Court and Court of Appeals 103

Decision of the Court of Cassation of Nov. 16, 1908, on Appeal taken by Lecouturier from Decision of Court of Appeals of Grenoble of March 27, 1906; Appeal Rejected: again holds that the Question of Foreign Trade-Marks had Never Been Before the Courts of France 103

French Courts have given Liquidator no Color of Right to Claim Foreign Marks of the Monks 104

Judgment of the Civil Court of Grenoble of May 18, 1905, Adjudging an Action Brought by Lecouturier on the Grounds that the Monks' New Label ("Pères Chartreux") "Counterfeited" Old Trade Marks: Court Holds Otherwise 104

"As to Counterfeit and Fraudulent Imitation" 105

This Decision Has Important Bearing on the Contempt Proceedings in the United States ... 106

"As to the Usurpation of Name" 107

"As to Unfair Competition" 109

Judgment in Favor of the Monks 109

Decision by Tribunal of Commerce of Aug. 14, 1909, Decides that Liquidator has no Right to or Use of the Name "Pères Chartreux", that this Name is the Property of the Monks; Determines anew that Monks have a Secret Formula, which Secret they have Carried Away With Them 109

Summing up of Judgments of French Courts 112

APPENDIX E.

PAGE

Review of Judgments Rendered in Foreign Countries Other Than France 113

Buenos Aires Judgment of Dec. 23, 1905, holds French Law of 1901 Inapplicable in Argentine Republic..... 113

Judgment of Federal Court of Rio de Janeiro of May 9, 1907, holds French Law of 1901 as Established only for French Territory and not Applicable to Brazil..... 114

Decree of Swiss Federal Tribunal of Feb. 13, 1906, holds French Law can Apply only to the Property of the Congregation Located in France,—Cannot be Applied in Switzerland..... 114

Judgment of Civil Tribunal of Hamburg of Feb. 23, 1906, in Favor of Liquidator, but *Reversed* by Hanseatic Court of Appeals ; Supreme Court of the Empire holds the German Law must Determine Rights in Germany,—in Favor of Monks..... 116

Judgment of Civil Tribunal of Tunis, in Favor of Liquidator, but Tunis is under French Protectorate 119

Judgments in Belgium, Holland, Spain and Portugal, have been Obtained Favorable to the Monks 120

Supreme Court of the United States,

NO. 99, OCTOBER TERM, 1910.

PÈRE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order, Petitioners and Cross-Respondents (Complainants in Circuit Court), vs. THE CUSENIER COMPANY, Respondent and Cross-Petitioner (Defendant in Circuit Court).	On Writ and Cross-Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF OF ARGUMENT FOR PÈRE ALFREDO LUIS BAGLIN, &C.

STATEMENT.

This is a *certiorari* to the Circuit Court of Appeals for the Second Circuit.

The Petitioner, "Père" Baglin, was the complainant in the court below, suing for himself and all the other members of the Order of Carthusian Monks.

The bill of complaint alleged a threatened violation by defendant, the Cusenier Company, of complainants' trade-marks and labels in connection with the importation by

defendant of a number of cases containing bottles of liqueurs or cordials.

The said bottles, with their labels, marks, capsules, etc., were admittedly identical with the bottles, labels, marks, etc., which complainants have used for several generations in all the markets of the world, in connection with the celebrated liqueurs, elixirs or cordials, which they and their predecessors have fabricated from time immemorial. The most conspicuous and important items of the commercial designations and marks, which defendant has copied in the exact form used by complainants, are: *first* and *foremost*, the trade-name "**Chartreuse**" (which is the name of their Order, to wit "the Monks of the Chartreuse"); *secondly*, the insignia of the Order, to wit, the globe, cross and stars (see lithograph opposite this page); and, *thirdly*, the fac-simile of signature of L. Garnier, a former "Procureur" of the Order. The size and shape of the bottles, with the name "Chartreuse" ground therein, the size, shape and color of labels, and the arrangements of the printed matter thereon, have been all closely copied by defendant.

Defendant, the Cusenier Company, admits the acts complained of, but attempts to justify the same, claiming that the consignor of the said liqueurs had the legal title to and possession of complainants' ancient trade-marks, labels and commercial packages. Therefore, the issue, as defined by the pleadings in the circuit court, was the *question of the ownership* of the said trade-marks, labels, &c.

The following recital (which is substantially that embodied in the petition for *certiorari* herein) will present to the Court, with sufficient fulness for the purposes of an opening statement, the facts out of which the claim of the ownership of said trade-marks, &c., on the part of defendant's consignor arises.

1. The Order of Carthusian Monks, known also as the Congregation of or Order of the Chartreux, is a religious Order of voluntary association, which, up to the year 1903, had maintained almost uninterruptedly for several hundred years its main "Chartreuse" or "Mother House" (the abode of its Superior-General) near Voiron, in the Department of Isère, Republic of France, the exact location of said main Chartreuse being on the demesne known as "La Grande Chartreuse."

FRÈRE MARCEL MARIE GREZIER, PROCUREUR OF T
CONVENT OF THE GRANDE CHARTREUSE.

LIQUEMOR CORDIAL.

No. 3,989. Registered Sept. 12. 1876.

LIQUEUR FABRIQUÉE
A LA Gde CHARTREUSE.
J. Garnier A

LIQUEUR FABRIQUÉE
A LA Gde CHARTREUSE
J. Garnier B J. Garnier

GRANDE CHARTREUSE D

L GDE CHARTREUSE



Witnesses:
John Gardner

Marcel Marie Grézier
By his attorneys.

2. The said Carthusian Monks have for several hundred years last past carried on the manufacture of a certain liqueur or cordial, known throughout the world as "Chartreuse," which said liqueur or cordial has been and now is manufactured exclusively by them in accordance with a secret recipe or formula whereof the said Carthusian Monks have been and now are the sole proprietors, and which, by reason of its excellence, and by reason also of the care and skill exercised in making it, and of the good repute of its makers, has become widely and favorably know, and is, and always has been, known by the trade-name "Chartreuse." The manufacture of "Chartreuse" was originally carried on in the Monastery itself, "La Grande Chartreuse"; but was subsequently transferred to the near-by town "Fourvoirie," where it was carried on under the supervision of the Monks until the expulsion of the Monks from France, as hereinafter stated.

3. In the year 1903, in consequence of the enforcement by the French Government of a legislative enactment known as the "Associations Act" of July 1, 1901, the said Carthusian Monks were expelled from French territory, and thereupon, they established at Tarragona, in the Kingdom of Spain, a factory for the continuance of their ancient business of making the liqueur or cordial known as "Chartreuse." From that time to the present, said manufacture of Chartreuse liqueurs has been (and still is being) carried on in accordance with said original secret recipe or formula (which is still the exclusive property of said Carthusian Monks). In fabricating said liqueurs at their factory in Tarragona said Carthusian Monks have employed identically the same ingredients as have been used from time immemorial in compounding the same.

4. Said liqueur or cordial has been commonly packed in bottles of peculiar design having conspicuously ground therein the word "Chartreuse" together with distinctive markings and ecclesiastical symbols which have been adopted by the Order of Carthusians, to wit, a segmented circle surmounted by a cross and seven stars, said bottles also bearing distinctive labels, whereon is found the word "Chartreuse", and the facsimile of the signature of L. Garnier, who was, a half century or over ago, the "Procureur" of said Order. A reproduction of certificate of Trade Mark Registration No. 3989, September 12, 1876, opposite page 2, shows the general style of bottle and labels used by the said Order.

5. In the year 1876, the said Order, by its then Procureur, Frère (that is to say, "Brother") Marcel Marie Greziér, caused the said name "Chartreuse" to be registered in the United States Patent Office on behalf of said Order, as evidenced by certificate of registration No. 3377, dated January 25, 1876; and in the year 1884, said Order caused a re-registration of said mark by its Procureur (Frère Greziér), as evidenced by certificate No. 10,897, dated January 29, 1884 (Tr., pp. 685-690).

6. After the departure of the Carthusian Monks from France as aforesaid, the Procureur of the Republic of France addressed to the Civil Court of First Instance of Grenoble, France, a Petition praying for the appointment of one Henri Lecouturier as a "sequestrating administrator and liquidator of the property of the Congregation called 'des Chartreux,' not only the properties situated and held at the principal monastery at St. Pierre des Chartreuse, but also those held by the said Congregation *in France* at its different establishments" (Trans., p. 1503); and thereupon the said Court at Grenoble, by a judgment rendered March 31, 1903, did appoint the said Lecouturier as administrator and liquidator of the property of the Congregation then in France; and by virtue of certain other subsequent judgments and decrees of the French Courts, the property of the Monks then in France was seized by said Lecouturier. The latter thereupon contracted with a manufacturer of distilled liquors, one Cusenier, to manufacture and to sell as "Chartreuse" a liqueur or cordial, and assumed to authorize said Cusenier to market the same in bottles identical in appearance with those long used by the said Order, and under labels and other markings as nearly as possible identical with those theretofore used exclusively by the said Monks in the marketing of their genuine "Chartreuse."

7. At the time of this concession by said Lecouturier to said Cusenier, purporting to give to the latter the authority to use complainants' trade-marks, labels, etc., the formula of the liqueur subsequently put upon the market by said Cusenier and sold as genuine "Chartreuse" in connection with complainants' trade-marks and labels, had not as yet been devised. After execution of the contract between Lecouturier and Cusenier, which contract was dated July 5, 1904 (Tr., p. 37, Q. 7) said Cusenier employed a chemist named Tièche

to devise a formula for a liqueur resembling, as closely as possible, the original Chartreuse. Said Tièche testifies that, in the production of defendant's formula, he was guided solely by the *taste* of the genuine Chartreuse (Tr., p. 1046, x-Qs. 29-32). Said Cusenier refused to disclose the formula by which defendant's liqueur was made. The manufacture of defendant's said liqueur began in October, 1904 (Tr., p. 39, Q. 20).

8. The said Lecouturier, or his concessionaire the said Cusenier, thereafter assumed to appoint one Jules Aubry, who in turn assumed to appoint the Cusenier Co. (defendant herein), of which Company said Aubry was Vice-President, to be the sole agent for the United States and Canada for the sale of the cordial or liqueur manufactured and put up by the said Cusenier in France, as aforesaid (Tr., p. 697).

9. Thereafter, namely, on January 4, 1905, the said Aubry or his representative, the Cusenier Company, being about to import a large number of cases of the so-called "Chartreuse" into this country, and having made shipment of the same to this country (Tr., p. 50), complainants filed in the Circuit Court of the United States, for the Southern District of New York, a bill of complaint praying for the usual injunction and accounting. A motion for preliminary injunction was brought within a week thereafter (156 F. R., 1015), and on January 11, 1905, a broad and comprehensive injunction order was issued by Hon. E. HENRY LACOMBE, Circuit Judge, against the defendant herein. Thereafter, the defendant herein appealed to the Circuit Court of Appeals, for the Second Circuit, and the cause in due time coming on for argument, the said Court of Appeals, by a majority opinion (141 F. R., 497), modified the injunction granted by Judge LACOMBE at Circuit, on the ground that such sweeping relief should not be given on proofs so meagre as those before the Court at that time; but the late Judge TOWNSEND dissented from the majority opinion of the Court of Appeals, and filed an opinion to the effect that the injunction as originally granted by Judge LACOMBE should not be modified, saying (141 F. R., 499, 500) there was

> "no uncertainty as to the material facts upon which the injunction was granted, namely, the validity of the trade-name 'Chartreuse,' complainants' title and long-

continued possession, and the infringement by defendant, and deception of the public. The only doubts raised are as to defendant's rights even in France." * * *

"The attempt to palm off on the American public a product of some decoction, composition of which is unknown, manufactured by an assignee of a French liquidator, by the appropriation of complainant's labels, which falsely indicate to the American public that it is purchasing a well-known product made by a secret process by this order of monks, which labels are stamped with a counterfeit of the signature of the order, is an attempt by fraud to make a gain out of the confidence of the public in the individual skill of the members of said order, and to appropriate, in violation of law and without consideration, that intangible, and incorporeal, but no less sacred, right of property, the good will of the complainant."

10. Thereafter, full proofs having been taken, both in this country and abroad, the cause came on for final hearing at Circuit, and his Honor Judge HOUGH sustained the bill of complaint, and granted the relief therein prayed, concluding his opinion by saying that to do otherwise "by every canon of American law" would "amount to confiscation" (Tr., p. 1564; 156 Fed. Rep., 1016). A decree in accordance with the opinion was thereupon entered and an injunction order issued which was substantially identical with the injunction originally issued by his Honor Judge LACOMBE on motion for preliminary injunction.

11. Thereupon the defendant again appealed to the United States Circuit Court of Appeals, for the Second Circuit, from the decree granted by Judge HOUGH; and, the cause coming on for argument, the said Court of Appeals in due time handed down its opinion (Tr., p. 1582; 164 F. R., 25) affirming the decree appealed from, except as to the paragraph numbered 4 of said decree. The paragraph numbered 1 of said decree, as affirmed by the Court of Appeals, reads as follows (Trans., p. 1567):

"1. Adjudged, Ordered and Decreed that the word symbol 'Chartreuse', as applied to liqueur or cordial, is a good and valid trade-mark, and in this country has

been and is now the sole and exclusive property of the Carthusian Monks or Fathers ('Pères Chartreux'), complainants herein; and that the said word symbol, 'Chartreuse', accompanied by the fac-simile signature of L. Garnier, as set forth in U. S. Trade-mark Certificate No. 3377, registered in the U. S. Patent Office, January 25, 1876 (re-registered January 29, 1884, as No. 10,897) and in U. S. Certificate No. 3989, registered September 12, 1876 (re-registered January 29, 1884, as No. 10,898), and as appearing upon 'Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co.', constitute good and valid trade-marks, and in this country have been and now are the sole and exclusive property of said complainants the Carthusian Monks or Fathers ('Pères Chartreux'); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants."

But the said Circuit Court of Appeals, after thus holding that the trade-mark "Chartreuse" was a good and valid trade-mark, and that in this country it was "*the sole and exclusive property* of the Carthusian Monks," nevertheless proceeded to modify the paragraph numbered 4 of the decree appealed from so as to allow the defendant herein to use the trade-mark "Chartreuse," on liqueur or cordial sold by defendant, provided it be (Trans., p. 1591)

> "so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants,"

and also to allow the defendant herein to make use of the peculiarly shaped bottle which the Carthusian Monks had used many generations as a package for the liqueur or cordial. The Court ordered the said modification of the decree of the Circuit Court, notwithstanding that they had said in their opinion (Trans., p. 1589):

> "A purchaser is compelled to rely upon external appearances and if he wanted the Monks' product he

would be justified in thinking he had procured it if the *bottle were identical in appearance* with that which contained the liqueur of years ago when he first became acquainted with it" (our italics).

The Court of Appeals did, however, award a perpetual injunction against the use by the defendant herein of the facsimile signature of L. Garnier, and also of the above specified insignia of the Order of the Chartreux, or from in any manner dealing, within this country, in

> "any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any label or symbol like or substantially similar to those appearing on 'Complainants' Exhibit Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

12. The Court of Appeals in their said opinion suggested two forms of label (Tr., p. 1590), of which the Court said they could "see no reason why the defendant should not be permitted" to use them, "printed in any language." The second of these labels proposed by the Court of Appeals begins with the words "Liqueur made at the Grande Chartreuse"—the *identical* words which the Carthusian Monks have for generations used on their old labels (See Complainants' Exhibit, Bottle of Chartreuse sold by Batjer & Co.). It is true that these words as used by the Carthusian Monks were printed in French ("Liqueur Fabriquée à la Gde. Chartreuse"), but the Court of Appeals says that the defendant may use either of these proposed labels "printed in any language" (Tr., p. 1590).

13. The opinion of the Circuit Court of Appeals was delivered by Judge COXE, Judge WARD concurring (Tr., p. 1582). Judge NOYES filed a dissenting opinion, in which he states as his view of the matter, that the entire business of the Monks,

both in France and in other countries, fell into the hands of the liquidator. He says (Tr., p. 1599):

> "It is my opinion that the business of the Congregation of the Chartreux was located in France; that the good will followed the business, and that the trade-mark 'Chartreuse' followed as an incident to the good will."

Judge NOYES, therefore, reached the conclusion that the decrees of the French Courts, and the acts of the liquidator in pursuance thereof, passed title in complainants' United States trade-marks to the liquidator's grantee. This conclusion is altogether without foundation, because the French Courts have most emphatically declared that the question of ownership of the foreign marks has not even been debated before them.

Judge NOYES, however, held (Trans., pp. 1601-2) that the liquidator had no right to use the insignia of the Carthusians, or the *fac-simile* signature of L. Garnier, and he regarded the decision of the majority of the Court requiring 'both parties to tell the truth about their goods' as doing exact justice between them, and also as protecting the public. "The result," says Judge NOYES, "is so equitable that, were it not for my inability to appreciate the complainants' standing to obtain such a decree, I should concur in it."

14. *Contempt Proceedings herein.* Since the removal of complainants' factory from their ancient habitat, they have carried on an extensive and expensive advertising campaign, the main purpose of which was to associate their products with the *personality of the makers*, rather than with a name which, in addition to indicating the personality of the makers, might be construed to have also a local or geographic significance. To this end they made the words "PÈRES CHARTREUX" a special and prominent feature of their labels and advertising matter. These words had never been used in connection with their products during the time the manufacture thereof had been carried on in France.

After the entry of the final decree herein, enjoining defendant as aforesaid, but permitting it to use certain labels containing the words "Grande Chartreuse," and stating that the products

were made under the authority of the Liquidator of the *Carthusian Monks*,—defendant, however, in marketing its products, substituted for the words "Carthusian Monks," which the decree permitted it to use, the words "Pères Chartreux." Thereupon, contempt proceedings were instituted by complainants, and Judge HOUGH, holding the Circuit Court, held defendant guilty of contempt, imposing a nominal fine. On appeal, this decision was overruled by the Circuit Court of Appeals on the ground that no mistranslation was proved; and, thereupon, a petition for writ of *certiorari* was duly presented to this Court, praying that the record then before this Court be supplemented by the record of the contempt proceedings. Consideration of the petition was postponed until the hearing of the principal case (Decision of January 10, 1910).

ARGUMENT.

The chief matter in dispute between the parties to this litigation is the ownership of the trade-mark "Chartreuse" as the commercial designation of cordials and liqueurs.

It is hardly necessary to argue that the word "Chartreuse" is a valid trade-mark. Even if it were primarily geographical in its signification (as to which there is some doubt), there is no question that, in this country at least, "Chartreuse" has for many years signified a cordial fabricated by the Carthusian Monks. In the judgment of the English House of Lords (hereinafter referred to at greater length, and printed in full as Appendix A hereof), the product is spoken of as "a liqueur of several sorts and colors known all over the world as 'Chartreuse,'" and as "the old and world-renowned liqueur 'Chartreuse'".

The question in litigation is, to whom does the right to the use of the word "Chartreuse" as a trade-mark for liqueurs now belong? Is it still the property of its ancient proprietors and registered owners? Or is it the property of defendant's grantor? Or is it the anomalous thing into which it has been converted by the decision of the Circuit Court of Appeals, to

wit, "a good and valid trade-mark" which in this country has been and is now "the *sole and exclusive property" of the Carthusian monks*, but which, nevertheless, defendant is entitled to use against the protest of its "sole and exclusive" owner?

We maintain that nothing which has occurred in the recent eventful, exciting, and somewhat strenuous history of the Congregation of the Chartreux, has in the slightest degree affected their long recognized, well-established, and judicially sanctioned* right to the use in this country, as a trade-mark for liqueurs, of the name "Chartreuse" and its derivatives, together with the special labels, shape of bottles, and other customary accompaniments thereof. It is abundantly proved (and indeed not seriously disputed) that complainants are *now* manufacturing the same cordial, according to the same secret formula (which is their exclusive possession), using the same ingredients, including herbs gathered from their former demesne near Voiron (Grenoble District), France. "The same plants, the same elements, the same secrets, the same processes are used" (Tr., p. 174, Qs. 59-64; p. 175, Q. 78; p. 177, Q. 101). The only change that has occurred, from a business point of view, is that complainants have transferred the fabrication from Fourvoirie (a village near Voiron where their factory was located at the time of their expulsion from France), to Tarragona in Spain (Tr., p. 174, Q. 56). We need not argue, before this Court, that a manufacturer does not forfeit his ownership of a trade-mark by removing his factory from one place to another.

We further maintain that (as held by the Court of Appeals and by the House of Lords in England, and by all the judges who have passed on the question in this country, except Judge Noyes) the action of the French Courts, in enforcing against complainants the provisions of the "Associations Act" of 1901, did not have the effect of depriving complainants of their trade-mark rights in this country. In fact such a result was not within the contemplation of that enactment, or of the judicial decrees that have been passed in the enforcement thereof. That Act was purely a political measure, without extra-territorial force or effect; and the judicial decrees

---

* See for example, *Bauer & Co. vs. Order of Carthusian Monks*, 120 Fed. Rep., 78, C. C. A., Seventh Circ.

based upon it have been strictly confined to property and rights within French territory.

The Act was declared by the French Court of Appeals at Grenoble, in its judgment of December 12, 1905, to be "a law of exception," and again in its judgment of March 27, 1906, to be "a law of exception and of police" (Tr., p. 730, fol. 2855; p. 739, fol. 2890).

In the Judgment of the English House of Lords this point was dealt with, as appears from the following extracts :

> "To me it seems perfectly plain that, by the very nature of things, a law of a foreign country, and a sale by a foreign court under that law, cannot affect property not within the reach of the foreign law, or the jurisdiction of the foreign court charged with its administration. But it is certainly satisfactory to learn from the evidence of experts in French law that the Law of Associations is a penal law—a law of police and order, and is not considered to have any extra-territorial effect" (Opinion of Lord MACNAGHTEN).
>
> "I think it would be, so far as I can see, not acting in accordance with the true meaning and effect of the French Legislature and decrees, *but acting contrary to that meaning and effect*, to give them the application beyond the territory of the French Republic which is desired in this case." * * * "I do not discern any intention, either expressed or implied, by the legislation or decrees, to effect the transfer or to affect the holding of property in other countries, to which the social and political problems, as French problems, did not extend" (Opinion of Lord SHAW of Dumfermline).

The Lord Chancellor, in summing up the Judgment of the House of Lords, said :

> "I do not think that any reflection rests upon the French Judicial Officer, Monsieur Henri Lecouturier, who is the Appellant in this case, but this property (for property it is) which has come in question in this Appeal is *property situated in England*, and must therefore be regulated and disposed of in accordance with the law

of England. I am glad to think that in so holding we are not affirming anything inconsistent with the decisions of the French Court, to which we, of course, at all times desire to pay the most becoming respect."

See also decision of German Supreme Court to the same effect, page 117 hereof.

If this view of the French Law of Associations, and of the judicial decrees of the French Courts, be adopted by this Court (and we do not see how any other view thereof is possible) it must follow without going into the details of the case, that the rights of the complainants in respect to their ancient trade-marks and labels in the United States are *precisely the same* as they were before the enactment of said Law of Associations of July 1, 1901.

The Office of a Trade-Mark.

The office of a trade-mark is to guarantee the origin of an article with which it has become identified in the minds of the public. It is in the nature of a *certificate* that the article upon which the trade-mark is placed is the product of the original manufacturer, and is the same in its constituents and properties as that with which the public has become familiar. It is unlawful in this country to apply a well-known trade-mark to an article different from that to which it has been customarily applied, for the reason that the public may thereby be deceived, and thus be induced to purchase the article under what amounts to a fraudulent misrepresentation. As this Court said in *Medicine Co. vs. Wood* (108 U. S., 218, 223):

> "If one affix to goods *of his own manufacture* signs or marks which indicate that they are *the manufacture of others*, he is deceiving the public and attempting to pass upon them goods as possessing *a quality and merit which another's skill has given to similar articles, and which his own manufacture does not possess in the estimation of purchasers.*" (Italics ours.)

A trade-mark, considered as property, has therefore this unique and essential characteristic, namely, that its possession and enjoyment are subject to the invariable condition that it shall be *so used as not to deceive the public.*

Defendant's Use of the "Chartreuse" Trademark Violates the Fundamental Law of Trademarks.

We need not seek far for a basis upon which this case can be effectually disposed of. Such basis is found in the use which defendant was making of the ancient trademark of complainants at the time this suit was begun. Regardless of all questions of ownership, and of all disputed matters of law and fact, the Court will enjoin defendant from the use of this mark for the reason that it was so using it as to deceive the public, and so as to induce purchasers to believe that the liqueur sold by it under said trademark was the same "highly esteemed tonic cordial" (Century Dictionary) which has always and universally been known by the name "Chartreuse".

Judge NOYES evidently recognized the force of this argument; but he thought complainants would not be benefitted "if the Court should be of the opinion that a deception was being practiced upon the public by describing as 'Chartreuse' a liquid obtained only through the use of the sense of taste and 'groping in the dark.'" For, says Judge NOYES, "If the public are being deceived the Courts will never afford affirmative relief to the defendant, and possibly public remedies against it might be available. But no wrongful use of the trademark entitles the complainants to relief, if they have lost all rights in it (Tr., p. 1600).

It is evident that, in reaching this conclusion, the learned Judge overlooked the fact that the use by defendant of the trademark "Chartreuse" is in *direct competition* with the business of complainants. If that use be deceptive the competition is "unfair," and *unfair competition* affords a well-established ground of equitable relief. Hence, the admitted fact we are now considering is decisive of the case.

We, therefore, call the attention of the Court at the outset to the evidence which establishes beyond all controversy that the article offered to the public by the defendant as "Chartreuse" is not the same cordial which the public has always purchased, prior to 1904, under that name, and under the labels and trademarks here in dispute. It might conceivably be the case, under the very unusual situation created by the

expulsion of the Monks from France, that the latter could no longer use their old marks and labels in precisely their original form, and yet that disability on their part would not give to the defendant any color of right to use those marks and labels in such manner as to deceive the public and injure complainants' business in the United States.

Defendant's Liqueur is of Recent Origin, its Formula Having Been Devised in 1904.

We have already cited Père Baglin's testimony showing that the genuine Chartreuse has always been made according to a secret formula which is the exclusive property of the Carthusians, and whose secrecy is most jealously guarded; and that this formula did not fall into the hands of the liquidator when the Carthusians departed from France (Record, p. 173, Q. 46; p. 175, Q. 69 incl.).

The testimony of defendant's witnesses fully confirms this.

Mr. Cusenier, called by us, testifies that he began the manufacture of defendant's article under a contract between himself and Mr. Lecouturier, the liquidator, said contract being dated July 5, 1904 (R., p. 37, Q. 7). The actual manufacture began in October, 1904 (p. 39, Q. 20). Defendant's product is, therefore, no older than that date. This witness further testified (p. 39):

> " Q. 21. Did the liquidator give you a recipe to help you in the manufacture?
>
> " A. No, sir.
>
> " Q. 22. The formula which you use, is it a formula which comes from you, which belongs to you?
>
> " A. Of course it comes from me, *it comes from my researches.* When I say ' of myself ' I do not mean myself personally, but I am speaking of the collaboration of my staff, of scientific men or scholars." (our italics)

This is, we submit, a decisive fact. There is manifestly no ground upon which it can be pretended that the receiver, Mr. Lecouturier, is carrying on the manufacture formerly con-

ducted by the Monks. Apart from all question as to his *right* to make the same article heretofore made by the Monks and to sell it to the American public under the ancient trade-mark of the Monks, the *fact* is that he is *not* making that article, nor even claiming (in this suit, though of course as a matter of advertisement to the public and as a part of the scheme of deception the claim is made) that he is making that article. The admitted fact is that the receiver found no manufacturing or other business when he took possession of the property abandoned by the Monks. Hence there never was in his possession any business or even a formula that he could deliver to his grantee, Cusenier. The actual nature of the transaction was an attempt by Lecouturier to authorize Cusenier to put upon the market *any decoction which the latter might see fit to make*, and to sell such decoction under complainants' ancient trade-mark as *genuine Chartreuse*. Of course, in order to make the scheme as successful as possible, Cusenier would try to produce something resembling the original article as closely as possible in *appearance and taste*, and this is precisely what he has done. But regardless of how well he may have succeeded in imitating the genuine Chartreuse, the nature of the business as one of deception stands undisguised.

Defendant's witness, L. S. Tièche testifies that he is the person who was entrusted by Mr. Cusenier with the making of the imitation Chartreuse (R., p. 1034, Q. 6). He further testifies as to how he proceeded to produce the imitation Chartreuse, as follows:

> " Q. 11. When you were entrusted with the manufacture of Chartreuse, what did you do in order to manufacture it ?
>
> " A. When I went to Fourvoirie, you know, I found myself in the very best conditions to be able to manufacture the liqueur. I found myself amongst plants cultivated by the Fathers, by the Carthusian Fathers, plants which altogether differed from the plants which we had had up to that time for the manufacture. I took these plants, I studied them, and by dint of trying, by experiments, by tasting, by the treatment of each plant, I succeeded in composing Chartreuse."

Cross-examination elucidated more details as to the methods followed by this witness in making defendant's imitation Chartreuse. It seems that *the only result he set himself to secure was to imitate the "taste" of the genuine article.* There was no attempt to ascertain the constituents of the genuine article (and this is conceded to be impossible) and to reconstitute it. All that defendant aimed to do was to produce something that resembled the genuine article in *flavor* and appearance.

We quote part of the testimony (Record, p. 1046):

> "x-Q. 29. You have just made use of a word which I retain: By 'tâtonnement' (groping in the dark). There only exists then, in your opinion, the method of 'tâtonnement' (groping) in order to determine the suitable quantities of component parts?
>
> "A. You have the principal basis, you know, but this basis has need to be verified at each manufacture, it is necessary to taste, to ascertain for yourself if the perfume is really the same, by comparison.
>
> "x-Q. 30. And it is only by the taste then that you arrive at this result?
>
> "A. Oh, of course the taste has a lot to do with it.
>
> "x-Q. 31. Are there other methods, more scientific methods?
>
> "A. Oh no, I do not think that there are scientific methods to determine the composition of a liqueur, unless, in my opinion, by very rough methods, which could not result in proportioning the components of a liqueur.
>
> "x-Q. 32. There is, then, *only the taste* which can serve as a guide?
>
> A. *Quite so.*" (Italics ours.)

We thus learn from the lips of defendant's own witness, the originator of defendant's formula, that the article which defendant offered to the American public as genuine "Chartreuse" certified by complainants' ancient trade-mark and by the facsimile of the former Procureur of their Order, was in fact a decoction originated by the witness, Mr. Tièche, in the latter part of the year 1904, which decoction was arrived at by that gentleman after "groping in the dark," guided only by his

taste, adding ingredients and varying proportions until he obtained something which *tasted like* genuine Chartreuse.

"Chartreuse" is certainly *something more than a flavor*. It has other properties besides that of *taste;* yet the testimony shows that defendant's sole aim in producing its liqueur was to obtain something that imitated the *flavor* of Chartreuse. What defendant's decoction *is* the witnesses refused to state. Tièche was asked what his formula was, but he refused to answer on the ground that it was a *secret and did not belong to him* (Record, p. 1049).

> "x-Q. 48. Could you let me know the plants which you were induced to use?
>
> A. I have not the right to divulge that *secret* of process, it does not belong to me."

We take this to be an important bit of evidence from a hostile source of the value and importance of the secret formula of "Chartreuse." If a recently devised *imitation* of the genuine Chartreuse liqueur has a commercial value to its proprietor, *a fortiori* the original ancient formula is a thing of commercial value.

In answer to x-Qs. 51, 52, Tièche admits that it is impossible to analyze Chartreuse.

> "x-Q. 71. And in order to affirm that the products [are] identical you only rely *simply on the taste which you have perceived?*
>
> A. *Absolutely.*" (Italics ours.)

Mr. Cusenier likewise refused to divulge his formula (Record, p. 42). We quote his testimony:

> "Q. 50. In the case of that formula you do like all your competitors?
>
> "A. I do as my competitors. I do as they do for their individual products; they do not give away to every one their systems, they keep them for themselves. I intend to do likewise. They do not divulge their processes, I intend to do the same."

If, as appears from some of the testimony, the contract relations between the liquidator and Cusenier have ceased (see

Record, p. 44, Q. 66 *et seq.*; p. 124, Q. 22), then, according to defendant's theory of the case, the decoction which they attempted to sell as "Chartreuse" would no longer be "Chartreuse" and could no longer be lawfully sold by that name, although precisely the same article. Not only so, but it would also follow that the liquidator could authorize some one else to "grope in the dark" for another decoction, composed of totally different ingredients, which could then be lawfully sold in this country as genuine "Chartreuse," certified by the trade-mark, the fac-simile signature, and the ecclesiastical symbols of the Carthusians, provided it was *made near the old Convent*, and *tasted like* the original and genuine article.

The Court, therefore, can safely and properly dispose of this case by application of the fundamental principle that the office of the trade-mark is to certify uniformity of product, and that the proposed use by the defendant of the ancient marks of the Order of the Chartreux is a flagrant violation of that fundamental principle.

The use which defendant intended to make of the label of the Order is peculiarly obnoxious to the law of trade marks, and constitutes in itself a striking evidence of bad faith.

Defendant attempts to justify its use of the word "Chartreuse" on the ground that it indicates the product of a locality, not that of a particular manufacturer. But this, if true, would obviously not justify the use by defendant of the complainants' labels. The Court will notice that these labels contain certain marks of a strictly *personal* nature, *e. g.*, the signature of L. Garnier, and the ecclesiastical symbols (the orb, cross and seven stars). The Court will further notice that defendant has imitated the labels with great exactness, the only difference being the name of the printer in exceedingly fine print on the margin. The name on the original label is: "Lith. Allier, Grenoble" (See Complainants' Exhibit, Bottle of Chartreuse Sold by Batjer & Co). The importance which defendant attaches to securing a *perfect imitation of the labels* of the Monks, so as to defy even a microscopical comparison, is emphatically shown by the fact that Lecouturier made great effort to induce the printer, Mr. Allier, to print the labels for him (Record, p. 382, Qs. 11–15); and failing in this, he had them printed by a concern, presumably in Grenoble, who put on the printer's mark "Imp.

Lith. Grenoble" (See Complainants' Exhibit, Defendant's Liqueur).

The Court below has affirmed the decree of the Circuit Court in enjoining the use of the symbols of the Order of the Chartreux and the signature of L. Garnier; but the argument from defendant's conduct, showing that its object is to appropriate the *personal reputation* of the Monks, is not impaired by that fact.

It is clear beyond all doubt that what defendant is aiming to accomplish by the use of these labels is to induce the belief on the part of the public that the liqueur upon which they are used is made by the Carthusians. This proof from conduct has the very highest value. Defendant's conduct subsequent to the decision of the Circuit Court of Appeals in adoping the name "Pères Chartreux" on their labels, as complained of in our motion to punish for contempt, affords further and convincing evidence that it is the personal reputation and good will of the complainants in the American market that defendant is seeking to appropriate.

Defendant's conduct thus clearly proves that the trade-mark "Chartreuse" is indicative of the *persons of the manufacturers* and not merely of locality, and that, unless they can use the trade-mark in such a way as to indicate that their product is that of the Monks, the trade-mark would be without value to them. This is further indicated by the fact that, although the Circuit Court of Appeals in its decision on motion for preliminary injunction, gave to defendant the right to use all of complainants' trade-marks and labels, with the single condition that they should print conspicuously upon each bottle the statement that the liqueur contained therein was *not made by the Carthusian Monks*, defendant did not, for a period of more than two years, avail itself of this permission, preferring not to offer its product to the American public at all if compelled to inform the latter that it was not the manufacture of the Monks.

Commenting on the fidelity with which the defendant has imitated the bottles, labels, etc., formerly used by the Monks, Lord ALVERSTONE, in delivering his judgment from the bench of the English Court of Appeals, said:

> "Therefore, I am driven to the conclusion that why they adopt that shaped bottle in England is because it

is only a part of the reputation, and that they thought it absolutely necessary not only to have the shape of the bottle but to have "La Grande Chartreuse" on it and to put the 7 stars which now and for some 40 or 50 years have been used in connection with that. Now one cannot help feeling that if it was only for the purpose of what I have called 'genuine competition,' the Fermiere Company would not have abandoned the genuine liqueur Jaune name which is better, we understand, than the original Chartreuse, but would have been only too anxius to have kept up the liqueur Jaune name, and would have avoided using that which so exactly represents the old manufacture."

The Lord Chief Justice also commented on an advertisement which referred to defendant's product as the "incomparable liqueur," and as a product which "is made and can only be made at La Grande Chartreuse," saying that this was "about as audacious a falsehood as you really could conceive."

There can be no doubt that these marks and labels secure to the users of them the benefit of the *personal reputation* of the Carthusian Monks, and that this is the very reason why defendant is making such strenuous efforts to secure permission to use them. The benefit which defendant derives from the use of these trademarks is in exact proportion to the extent to which they succeed in appropriating, through deception of the public, the *personal reputation* of complainants; and the damage to complainants is proportionate to the benefit derived by defendant. These considerations afford, as we respectfully submit, ample ground for the injunctive relief prayed by the bill of complaint herein.

Defendant's Business Not a Continuation of Complainants' Business.

It will be appropriate at this point to consider the proposition upon which defendant builds its main argument, namely, that the business carried on by the liquidator's concessionaire, Cusenier (and later by his successor, the

Fermiere Company), is the continuation of the manufacturing business created by the Monks, and carried on by them for many years at and near their former Monastery, la Grande Chartreuse, in France. Assuming this proposition of fact to be true, defendant's counsel appeal to the well-settled principle of trade-mark law, to which we have also appealed, namely, that "there can be no assignment of a trade-mark save in connection with a business which that trade-mark represents" (Defendant's Brief in the Circuit Court, p. 14). Since complainants and defendant are thus in absolute agreement as to the principle of law involved, there remains only the question of fact to be decided, namely: as between the manufacture of liqueur now conducted by the Monks, and that conducted by the "Compagnie Fermiere de la Grande Chartreuse" (a concern which had no existence until the year 1906),—which one is the continuation of the *old* business founded, owned and carried on by the Monks in France, and which one is the *new* business?

We do not see how there can be any *question* about it. On one hand we have admittedly the original manufacturers, making the original products, according to the ancient secret formulas, and composed of the same ingredients. On the other hand we have a *new* manufacturer, making a *new* product, according to a newly-devised formula, and composed of undisclosed ingredients. On these facts, how can there be any question as to which is the new business, and which is the continuation of the old business? While we find in defendant's brief below, again and again, the assertion that the business now carried on by the Compagnie Fermiere is the continuation of the same business as that formerly carried on by the Monks, it is difficult to comprehend what counsel mean by this, since they bring forward nothing whatever to establish the alleged identity, beyond the fact that the Fermiere Company is said to be (though there is no proof of it) occupying, for its fabrication, the premises in which the Monks formerly made their celebrated liqueur.

As to the matter now under discussion, Judge Hough held as follows (Trans., p. 1563; 156 F. R., 1016, 1018):

> "Some strength might be found in defendant's argument had the receiver become possessed of the business

that produced the product indicated by the trade-mark. This he did not do. A business does not inhere in a place or a building, nor depend for validity upon continuance in one locality or country. When the monks fled from the rigor of French law they took their business with them. The testimony shows that it exists today in Spain, and, while they continue to transact it there or elsewhere, no law but that of the United States can deprive them of the lawful fruits thereof in this country."

This statement is so manifestly sound that no words of ours could add to its force. See decision of German Supreme Court to same effect, page 118 hereof.

It seems clear that, for the purpose of the present discussion, what is meant by the "same business" is the manufacture of the same article always heretofore known as "Chartreuse" cordial. The manufacture of the original product by the original manufacturer thereof, regardless of the location of the factory, is unquestionably the "same business" for the purpose of determining the legitimate use of the trade-mark by which that manufacturer has always designated that product, and by which the public has always known said product as the fabrication of that manufacturer.

The matter is well put in the opinion of Lord ALVERSTONE as follows:

"Therefore, if this question is to be decided apart from the effect of the French Judgments, there clearly could not be any question at all about it. Supposing, for the purpose of testing this question, that the Monks of La Grande Chartreuse had moved their manufacture to another monastery in France, or to another building in France not a monastery, and had sold the fabric of the distillery, and had left the district of La Grande Chartreuse, and had gone on making the same liqueur in the same way, could it have been contended that a happy individual who was able to buy as old bricks and mortar the distillery at Fourvoirie could immediately call any liqueur he made there 'Chartreuse,' and have put that upon the English market in that name? Stated in that way, I do not think the case would be arguable."

Judge HOUGH stated the situation very tersely and accurately when, speaking of the second proposition of defendant (that based on the change of labels by the Monks), he said:

> "The defense now under consideration is affected by the same fallacy as the first, viz.: the thought that the Liquidateur is the *successor* of the monkish industry. Nothing could be further from the truth. He and all claiming under him are *rivals in business*, enjoying the advantage of governmental protection in the country of his appointment." (Our italics.)

This finding commended itself to the English Court of Appeal, as appears from the concurring opinion by Lord Justice KENNEDY, from which we quote the following strong and pertinent passage:

> "If that be so, it seems to me that we have to deal with a case in which it is shutting one's eyes to the facts not to see that what is being done is a representation that the thing which is being put upon the market is something which it is not, and that there is an injury of which the Plaintiffs have a right to complain, who have continued to make, though in a different place of business in which they manufacture, the article which they manufactured before, and which is represented by the Defendants untruly to be manufactured by them.
>
> "I do no think that more can be said with regard to what took place in France than this which is put in the Judgment of the American Court, and I think put as well as it could be, and that is that the Liquidator and all claiming under him are *rivals in business* enjoying the advantages of Government protection in the country of his appointment." (Our Italics).

On this question of fact defendant cannot find any support or comfort even in the judgments of the French tribunals. On the contrary, the Court at Grenoble has expressly decided that the liqueur sold by the defendant is not the genuine Chartreuse.

The French Court at Grenoble has Decided that the Product Sold by Defendant is Not Genuine Chartreuse.

The fact that the liqueur sold by the defendant is not the genuine Chartreuse as previously made by complainants has been adjudicated in France.

The judgment of the Civil Tribunal at Grenoble, by whose decree Mr. Lecouturier received his commission as liquidator of the property of the Congregation of the Chartreux, in an action brought by said liquidator, rendered a Judgment dated May 18, 1905 (Complainants' Exhibit S, Record, p. 701), from which we quote the following pertinent passages (pp. 711–712):

> " Whereas the present suit presents a special aspect which it is well to define: Whereas in ordinary suits for counterfeit there is always a manufacturer whose products have acquired the confidence of the public and whose mark guarantees the authenticity of manufacture, struggling against counterfeiters, who, by means of a more or less ingenious imitation of his mark, endeavor to benefit their products by the favor obtained by the products of their competitor; whereas in the present suit, Lecouturier, receiver of the properties of the Congregation of the Chartreux, is indeed in possession of the mark of the Grande-Chartreuse, *but the products* which he is having made at Fourvoirie and which he sells to the public under this mark, *are not those which the Chartreux Fathers have made according to their process of manufacture and have sold up to the time of their expulsion from the Convent of the Grande-Chartreuse;* as by application of the law of July 1st, the mark of the Grande-Chartreuse may indeed have remained in the hands of the receiver of the dissolved and expelled congregation, *however the secrets or processes of manufacture have been carried away by the Chartreux, as an unseizable property, since processes not patented remain unknown, and the mark was thus*

> *separated from the product of which it had up to that time guaranteed the production.*" (Our italics.)

It is clear from the above that the use to which the defendant has put the trade-marks and labels of complainants is in direct violation of the fundamental provisions of the trade-mark law of this country. If the mark can lawfully be used in France apart from the article with which it has always been associated, then the law of France is, in this respect, different from that of other civilized countries. The above quoted judgment of the Civil Tribunal intimates as much in the following passage (Record, p. 712, fol. 2783):

> " as the mark has value especially by the product that it protects and not by itself away from this product, *as in our law, contrary to the legislation of other countries, the product and the mark are not indissolubly bound together.*" (Our italics.)

In this country, however, they *are* indissolubly bound together. This is recognized by defendant's counsel, as we have already shown.

The Trade-mark " Chartreuse."

Although there is no dispute between the parties hereto as to the validity of the trade-mark " Chartreuse," that is to say as to the availability of that word for the purposes of a trade-mark, it may be well to introduce at this point a few paragraphs which will show that the word " Chartreuse " does constitute a valid trade-mark as applied to liqueurs, cordials, etc., and that it is, as held by the court below, the exclusive property of the complainants.

COMMON RECOGNITION.—The mark is so famous that evidence in support of its character as a valid trade-mark is scarcely needed. A striking instance of the general recognition of this trade-mark is presented in a comparatively recent decision of the Court of Appeals of the State of New York (*Falk vs. Trading Co.*, 180 N. Y., pp. 445, 451), wherein the Court chose this trade-mark because, being so well known by

everybody, it would serve as an illustration of a proposition which the Court was considering, saying :

> " The celebrated cordial, which is in use the world over, known as ' Chartreuse ' is a sample of a *trade-mark*, the bare assignment of which might confer upon the assignee the right to manufacture and sell that article." (Italics ours.)

It may be remarked in passing that the learned Court does not, in this statement, exaggerate the effect which the transfer of the name " Chartreuse " would have.

REGISTRATION.—The word " Chartreuse " was registered as a trade-mark in this country in 1876 (Record, pp. 685, 692), by Frère Grézier, a former Procureur of complainants. It was accompanied by a fac-simile of the signature of L. Garnier, a predecessor of the registrant, and in that form had been used for more than thirty years. It is this precise label that defendant is infringing.

The mark was re-registered under the new law (pp. 689, 695) in 1884. The Commissioner of Patents has thus had occasion to pass twice upon the validity of the trade-mark " Chartreuse."

ADJUDICATIONS.—Complainants' rights in the exclusive use of the word " Chartreuse " as applied to liqueurs, cordials, etc., have not only been recognized and generally respected from time immemorial, but they have been repeatedly enforced by the courts of this country. There are a number of unreported decisions in the Second Circuit, whereof we print one by Judge SHIPMAN (in *Grezier, Procureur, vs. Girard*), as " Appendix C " to this brief. In that case, decided April 13, 1876, the Court found the complainant to be " entitled to the exclusive use of the word ' Chartreuse ' accompanied by a fac-simile of the signature of L. Garnier as a trade-mark for cordial or liqueur."

In a comparatively recent case (*A. Bauer & Co. vs. Order of Carthusian Monks*, 120 Fed. Rep., 78, decided January 6, 1903) it was held by the Circuit Court of Appeals, Seventh Circuit, that the name " Chartreuse " " at once designates the inventor, the maker, and the place of manufacture, and constitutes, in each of these particulars, a distinctive mark which could not truthfully be applied by others to a similar or analogous pro-

duct" (citing as authorities numerous decisions of the *French Courts*). The mark was held to be infringed by the use of the word "Chasseurs," accompanied by other imitative words and devices.

In the statement of facts preceeding the opinion of the Court in that case is a brief history of the manufacture of the cordial "Chartreuse," a description of the manner in which that manufacture is and has been carried on by the Monks under the supervision of the "Procureur" of the Order, and a description of the bottles, labels, and trade-marks which have been used in connection with it. After reciting the registation of the trade-mark, and the manner of its use by complainant, the statement continues:

> "So identified, this liqueur has become celebrated in every country of the world, its annual sales in the United States of America amounting to 4,000 cases annually, in the State of Illinois 500 cases annually, and in the city of Chicago about 400 cases annually."

In the opinion the Court says (p. 81):

> "The Order of Carthusian Monks, which has existed for centuries, is the order which was incorporated and which to-day is carrying on the business. The père procureur appointed to manage this secular business is selected from the monks of the religious order, and is succeeded upon his death or retirement by some other monk. There is no change, and has been none in the conduct of the business. The property and good-will belong, as they have always belonged, to the order of Carthusian Monks, and there is no need of any statement of a change of the individual who fills for the time being the office of manager."

In the Judgment of the English House of Lords, speaking of the name "Chartreuse," it is said, "To this trade name, and to the insignia by which they had designated their manufacture, the Monks had vindicated their exclusive right in many lawsuits in England." And the Lords adopted the language of the Lord Chief Justice of England to the effect that there was

"not the slightest doubt that for a great many years before 1901 the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery."

The Significance of the Word "Chartreuse" is Not Geographical.

By saying in the above quoted opinion that the name "Chartreuse" designates, *inter alia*, "the place of manufacture," the U. S. Circuit Court of Appeals for the Seventh Circuit did not mean to assert that the name has merely a geographical significance. Even if it had primarily a geographical meaning, its acquired meaning is a liqueur made by the Carthusian Monks. Any liqueur sold as "Chartreuse" and not made by them, or under their supervision, would be a deception and a fraud.

The word "Chartreuse" is a common noun in the French language, signifying a "cloister" or "retreat."* It is, therefore, a very suitable trade-mark for a cordial made in a cloister or retreat.

There is room for dispute as to the precise derivation of the word "Chartreuse," and as to whether the place gave its name to the monastery or *vice versa*. But there can be no doubt at all that, if the wo d had primarily a geographical signification, it has long since acquired a special commercial signification. Judge HOUGH, in his opinion herein, said (Trans., p. 1560; 156 F. R., 1017):

> "This word is not a place name and never was; it is the French term for a kind of building, *i. e.*, a Carthusian monastery; but for American commercial purposes it means, and long has meant, a certain drinkable manufactured by that branch of the Carthusian order living near Grenoble in La Grande Chartreuse, *i. e.*, the monastery occupied by the Father Superior. (*cf. Siegert vs. Gandolfi*, 149 Fed. Rep., 100; *Bauer vs. Siegert*, 120 Fed. Rep., 81)."

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* See "Grand Dictionaire Universal du XIXe Siecle Francais."

On this point Lord ALVERSTONE said:

> "I do not know that everyone would state the questions in exactly the same way, but that is how they occur to my mind. After listening most carefully to Sir Robert Finlay's most just and proper criticism of the evidence, I have not the slightest doubt that for a great many years before 1901 the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included outlying buildings, and whether the final product put into the bottles was actually bottled at the distillery or at the monastery, is, to my mind, absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the Monks of the Monastery of La Grande Chartreuse."

Geographical Names May Constitute Lawful Trade-Names Under the Circumstances of the Present Case.

It is thus clear that the word "Chartreuse" does not have exclusively a geographical signification, even if (as some authorities suppose) its primary signification was geographical.

But were the facts otherwise defendant would not be permitted to sell its liqueur as "Chartreuse," even though it was made at a place of that name. A case directly in point is *Wotherspoon vs. Currie*, decided in the British House of Lords (L. R., 5, H. L., 508), and which has frequently been cited with approval by the courts of this country (*e. g.*, by this Court, in *Lawrence Co. vs. Tenn. Mfg. Co.*, 138 U. S., 537, 550, and the C. C. A. Fourth Circuit, in *Scriven vs. North*, 134 Fed., 366, 377). The decision, as cited in *Scriven vs. North, supra*, was as follows:

> "the plaintiff had purchased the business and trade-mark of a firm which had manufactured starch at

Glennfield, in Scotland, which was labeled and widely known as 'Glennfield Starch,' and had removed the works to Paisley. The defendant, who had previously done business at Paisley, began manufacturing starch at Glennfield, and selling it as 'Glennfield Starch.' This was held to be unlawful by the House of Lords, on the ground that the word 'Glennfield' had become *detached from its original geographical meaning* and acquired a secondary signification in connection with the starch, so as to mean *starch made by the plaintiff*, and the latter had thereby acquired an exclusive property in the word." (Italics ours.)

Other cases on all fours with the one just quoted are *Thompson vs. Montgomery* (41 Ch. D. 35, 50), the famous "Stone Ale" case, and *Reddaway vs. Banham* (from the House of Lords), the "Camel Hair Belting" case, both of which have frequently been cited and approved by this Court and different Courts of Appeal.

Shaver vs. Heller & Merz Co. (108 F. R., 821, C. C. A. 8th Cir.) the "American Ball Blue" case, reviewed and approved the above cited cases, together with numerous others to the same effect, and (on page 832) cites many cases in support of its statement that :

> "The use of such geographical or descriptive terms to palm off the goods of one manufacturer or vendor as those of another, and to carry on unfair competition, may be lawfully enjoined by a Court of Equity to the same extent as the use of any other terms or symbols."

The Court continues (pp. 833-4) :

> "Whether the brands 'American Ball Blue' and 'American Wash Blue' indicated the origin and ownership of the articles to which they were applied in 1872 and 1874, when they were first used, or not, the evidence is overwhelming that by association they came to point out to the trade articles made and owned by the appellee long before 1898, when the appellants first appropriated them, and it was for this reason alone that

they used them in their endeavor to deceive the public and to filch the business of the appellee."

In *Buzby vs. Davis* (150 F. R., 275, C. C. A., 8th Cir.), *Shaver vs. Heller & Merz Co., supra*, is quoted and fully approved.

Bearing in mind the French "Associations Act," its effect on the Congregation of the Chartreux, the appropriation of the business by the Liquidator, and the subsequent palming off on the American public of the imitation liqueur as genuine Chartreuse, using the names, fac-simile signature, and ecclesiastical symbols, the following extract from a decision by the Court of Appeals for the 7th Circuit might easily be paraphrased to describe accurately the present case:

> "Upon the record, we are constrained to believe that the Pastor Kneipp Medicine Company, the appellee, was 'conceived in sin and brought forth in iniquity,' that wrong attended at its birth, and that fraud stood sponsor at its christening, imposing upon the corporate child a name to which it was not entitled, and which it had no right to bear. The name of an eminent philanthropist was taken without his consent and against his protest. This assumption of name was a wrong which we cannot doubt a Court of Equity would, upon his application, have restrained, even if the purpose of the corporation had been wholly innocent and praiseworthy; but here, it is clear, the name, the portrait, and the fac-simile signature of Rev. Sebastian Kneipp were employed, not only without his consent and against his will, but were so assumed with a view to deceive the public, and to induce the belief that the product marketed and sold was prepared under his supervision, and offered to the public with his sanction. Under such circumstances, equity will not hesitate to extend its preventive arm. Pillsbury v. Mills Co., 24 U. S. App., 395, ; 12 C. C. A., 432 and 64 Fed., 841."
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> *Kathreiner's Malzkaffee Fab. vs. Pastor Kneipp Med. Co.*, 82 F. R., 321, 324, 325.

In *Siegert vs. Gandolfi* (149 F. R., 100 ; 79 C. C. A., 2d Circuit), the controversy involved the use of the name " Angostura Bitters." Although the name " Angostura " was the name of the town where Siegert's product was first manufactured, and hence was purely geographical, and although the factory was afterwards removed to another place, the Court enjoined defendant from calling his product " Angostura Bitters " on the ground that the said name had acquired a secondary signification, indicative of the product of a particular manufacturer.

To the same effect is the decision of the Circuit Court of Appeals, Seventh Circuit, in *Bauer vs. Siegert*, 120 Fed., 81.

Complainants' Rights of Ownership.

We have so far argued the case on the ground of the fundamental purpose of a trade-mark and from the point of view mainly of the rights and interests of the American people. We have put that argument in the foreground for the reason that the rights and interests of the American people cannot possibly be adversely affected by actions of the Courts of France construing and giving effect to acts of the French legislature. But we rest our case also upon the rights of the complainants as owners of registered trade-marks, lawfully used by them for the protection of the good-will of their business in the United States.

The property involved in this suit is the *good-will of the business which has come into existence* **in this country,** *being the outgrowth of transactions, extending over many years, between complainants and the American public.* We submit (1) that it was not one of the objects of the French law of 1901 to confiscate this American business, and (2) that even if such were one of the objects of that law said business is not subject to the jurisdiction of the French laws and tribunals.

The Circuit Court of Appeals for the Second Circuit has given a definition of " good will " in *Washburn vs. Wall Paper Co.* (81 Fed. Rep., 17, 20) :

> " Good-will has been defined as ' all that good disposition which customers entertain towards the house

of business identified by the particular name or firm, and which may induce them to continue giving their custom to it.' There is nothing marvelous or mysterious about it. When an individual or a firm or a corporation has gone on *for an unbroken series of years* conducting a particular business, and has been so scrupulous in fulfilling every obligation, so careful in maintaining the standard of the goods dealt in, so absolutely honest and fair in all business dealings that customers of the concern have become convinced that their experience in the future will be as satisfactory as it has been in the past, while such customers' good report of their own experience tends continually to bring new customers to the same concern, there has been produced an element of value quite as important—in some cases, perhaps, far more important—than the plant or machinery with which the business is carried on." (Italics ours.)

The following is particularly in point:

"Nor is it [good-will] indissolubly connected with *any particular locality*, or any specific *tangible* property. Reference has been made on the briefs to the publishing house of 'Harper & Bros.' If its present establishment in Franklin Square were destroyed by fire to-morrow, and everything therein contained were swept out of existence, it is surely manifest that, *so long as the firm itself survived, and continued to transact its old business*, it would still hold its 'good-will,' although the business should be thenceforward conducted *in a new building erected on some uptown street, and supplied with entirely new machinery and equipments.* If good-will be a 'parasite,' it is a 'parasite' *of the business from which it sprung*, not of the mere machinery by which that business was conducted." (Our italics.)

From which may be readily deduced the proposition that possession of the building where Chartreuse was formerly manufactured, and of the stills and other appliances (if they were left behind) does not give to the present possessor the right to the good-will of complainants' ancient business.

Admittedly the Monks owned the business in question during all the centuries they manufactured liqueurs in France, and if so, they had at any time the right to move their base of operations from one place to another. **The right to transfer a business from place to place is an incident of ownership.** It is an unheard of proposition, for which no support can be found either in reason or authority, that the owner of a business forfeits his ownership thereof if he forsakes his original factory and instals the fabrication of his product at another place, whether near or remote, and whether the removal was voluntary or involuntary.

The good-will involved in this suit, being that good disposition which customers in the United States entertain towards the complainants, could not in the nature of things be subject to the confiscatory decrees of a foreign court. The property in question has its existence in this country, and is subject solely to the laws of this country.

The owners of this good-will, and of the trade-marks by which it is safeguarded, are the members of a voluntary religious order, scattered over various countries of the world (Record, p. 170, Q. 24*a*). So far as concerns the American trade-mark rights of complainants, it is obviously immaterial where their factory is located. They might locate their factory in any country, or might have factories in several different countries. In the latter case, if the location of the *factory* gave jurisdiction over the good-will of the American business, we might have different persons, each claiming, as the concessionaire of a foreign government, the right to sell a decoction to the American people as genuine Chartreuse.

But, as already stated, there is no reason to suppose that the confiscation of this American good-will was one of the purposes of the French law of 1901. That measure was strictly a domestic affair, being an exercise of the general police powers of the State.

The Congregation of the Carthusians, having been refused "authorization" under the provisions of this law could no longer exist as an association in France. Upon their departure from France they necessarily left behind them such property as, from its nature, could not be removed; and a liquidator or receiver was appointed to take possession of

such abandoned property (see Weiss Opinion, Record, p. 741). Litigation is now in progress in the French Courts to determine just what property came into the possession of the liquidator, the most important item in controversy being the good-will of the business, and the trade-marks *in France*. At last accounts this litigation had not been finally decided; but the conclusion which the French Courts may reach as to that is immaterial. Whether or not it can be said, by fiction of law, that the business of selling liqueurs and cordials theretofore carried on in France, and the trade-marks connected with that business, were left behind when the Congregation of the Chartreux departed from France, it is certain that the *good-will of the American business*, and the trade-marks which, under our law, are *indissolubly connected therewith*, did not come into the possession of the liquidator. That business was not abandoned by the Monks, but has been and is still carried on by them through the same trade channels. (See testimony of Henry Batjer, Record p. 639, Q. 17; p. 640, x-Q. 22).

It was clearly recognized by the Court below and by the Court of Appeal and House of Lords in England, that the matter involved in these cases is the good-will of the business in the United States and in Great Britain respectively. It was further recognized that the French Courts had not attempted to deal with, and were not competent to deal with, the trade-mark rights and the good-will of the complainants' business outside of France.

On this point Judge HOUGH, in his opinion herein at Circuit, held (156 F. R., 1018):

> "It is not denied that on July 2, 1901, complainants possessed a valuable asset *in this country—i. e.*, the right to vend their produce under certain brands and labels and in bottles of certain size, shape and marking, which right had long existed, had received the recognition of federal trade-mark registration and been vindicated in our Courts. *Bauer vs. Order of Carthusian Monks, supra; Grezier vs. Gerard*, unreported and decided in this Court April 13, 1876." (Italics ours.)
>
> "This American property did not pass to the re-

ceiver, and could not enure to his benefit or that of his assignee by any proceeding taken against complainants in France."

In the concurring opinion of Lord Justice BUCKLEY of the British Court of Appeal the matter is thus stated:

> "It seems to me, therefore, that the French Judgment, which I think is binding upon all the parties before us, was subject to this limitation; in the first place, that the French Court, of course, was not adjudicating upon subject matters over which it had no jurisdiction, it was adjudicating upon this business as carried on *in France upon the good-will of this business as enjoyed in France*, on the trade-marks of this business as enjoyed in France, but of course the jurisdiction of the French Court could not run to determine what ought to be the contents of the English register of trade-marks —it could not affect that in any way, nor if there was a good-will in England as distinguished from a good-will in France, could the Order in France affect that at all." (Italics ours.)

This point is very tersely stated by the Lord Chancellor of England in the words already quoted:

> "this property (for property it is), which has come in question in this Appeal, is property situated in England, and must therefore be regulated and disposed of in accordance with the law of England."

The Attempt of the Liquidator to Exercise Ownership Over the Foreign Trade-Marks Has Been Disapproved by the French Courts.

It has been held by both the lower courts and by the English Court of Appeal and House of Lords, that the legislative and judicial proceedings of the Government of France were not competent to divest complainants of their trade-mark rights in other countries and to convey the same to defendant. The French Courts, however, have not attempted to do this. On

the contrary, so far as they have taken any notice of the foreign trade-mark rights of complainants, they have disapproved the assumption of the Liquidator to exercise ownership thereof. The Court of Appeals at Grenoble by a previous judgment of July 19, 1905 (Defendant's Exhibit 12), had affirmed the judgment of the lower Court authorizing the liquidator to take possession of the business and trade-marks of the complainants. That decision, however, did not indicate whether it was intended to cover only the French trade-mark rights, or those in foreign countries as well. In order to settle this question, the liquidator, Lecouturier, applied to the Appellate Court for what is known as an "interpretative decision." This decision was rendered on March 27, 1906 (Complainants' Exhibit, Weiss 23). The Court thereby decided that its former judgment had the effect of vesting in the liquidator the ownership only of the French trade-marks. The liquidator, therefore, in assuming to grant to defendant the right to sell its liqueur in the United States as genuine Chartreuse, is acting without even the color of authority from the French Courts.

In the said judgment of March 27, 1906, the Court of Appeals recited the judgment of July 19, 1905, as holding that the business acquired in appearance by Rey, with all its accessories and notably the *marque de fabrique*, constitute in reality an asset detained by the Congregation of the Chartreux at the date of the promulgation of the law of July 1, 1901, and subject from that time to the liquidation ordered by the judgment of March 31, 1903 (Record, p. 738).

The Court of Appeals at Grenoble has expressly held, in its judgment of December 12, 1905, and again in that of March 27, 1906, that "*the law of July 1, 1901, is a law of exception.*" The latter judgment adds "*and of police.*"

That is to say, the French legislation has seen fit to make by enactment an "*exception*" to the general freedom granted to individuals to form themselves into associations for various purposes. This exception applies only to *religious associations*, and is based upon the traditional law of France that a Frenchman cannot part with his right to own and alienate property and his right to marry. The vows of "poverty, chastity and obedience," taken by those entering religious orders, are deemed to be in conflict with the best interests of the State,

and hence the exceptional and purely domestic character of the Act of July 1, 1901 (Glasson & Weiss Opinion, § IV, Complainants' Exhibit 28, Record, pp. 774, 791).

That such a measure of political expediency can have no possible effect outside of France, and cannot disqualify complainants to carry on business in the United States, and was never intended even to have such an effect, are matters which are too clear to require argument.

The able opinion of Messrs. Glasson & Weiss (p. 774) shows the Act of 1901 to be (1) a law of exception, (2) a law of confiscation, (3) a national and territorial law.

The following passages from the Judgment of the House of Lords are pertinent in this connection:

"It is a significant commentary upon and justification of, the view taken above with regard to the French legislation and decrees, that it seems to be in complete accord with the decisions come to upon the same topic by French tribunals." After reference to some of the decisions of said French tribunals, the following occurs:

"The French Judges note the fact which is in accordance with English law that, outside of France, the business and the marks should go together. It is accordingly in conclusion, my Lords, satisfactory to observe that the decision of your Lordships House, far from being out of harmony with the lines of French procedure, whether judicial or legislative, appears to be in entire accord with its provisions and its limitations" (Opinion of Lord SHAW of Dumfermline).

The statement of the Lord Chancellor to the same effect has been already quoted.

The French Law of 1901, and the Decrees of the French Courts Give no Color of Authority to Defendant to Use the Trade-Marks of Complainants in the United States.

We have no occasion to question or to discuss the political expediency, or the justice and fairness, of the French Associations Act of 1901. The national legislature of France is alone competent to say whether or not the best interests of the nation required the expulsion of religious orders, such as

that of the Carthusian Monks, and since the French legislature has decided that question in the affirmative we may and must assume that it intended that the law should be executed in such way as to accomplish its object with a minimum of hardship, inconvenience and loss to the complainants. In the Act itself, and in all that has thus far been done by the French Courts in pursuance of it, there is nothing to indicate that the Act was intended to have the effect of operating extra-territorially, and specifically nothing to indicate that it was intended to confiscate the trade-marks and business which the complainants had secured and established in the United States. The only action of the French judiciary which seemed to treat the foreign trade-marks as coming into the possession of the liquidator was an order of a Judge in Chambers of February 15, 1905, authorizing the liquidator, as a temporary measure, to have the foreign trade-marks transferred to his name *pendente lite*. This order, however, was annulled by the Court of Appeals of Grenoble by its decision of December 12, 1905 (Complainants' Ex., Weiss 22, Record, p. 725), as already stated.

The liquidator exercises his authority in France by virtue of a decree of the Civil Court at Grenoble of April 23, 1904, which was general in its terms. In a subsequent proceeding to which the liquidator, Abbe Rey, and Bonal & Son, were parties, the Court rendered a judgment dated May 17, 1904, in which it is stated in substance that the said liquidator was authorized to take charge of the trade-marks for the purpose of *protecting them from such damage as might be suffered from lack of the presence of a legal owner in France to prosecute infringers.* No reference was made to foreign marks, and the purpose of the decree shows that these were not in view at all. The Court said (Record, pp. 1554–5) that it was

> "certain that there is today extreme urgency that the mark of la Chartreuse, on the ownership of which *nothing is yet definitely adjudged*, should be protected *for the benefit of those legally entitled thereto against imitations.*" (Italics ours.)

The Court goes on to recite in the next paragraph that there was actually pending at that time criminal prosecutions

for imitations of the Chartreuse mark, in which Abbe Rey (the putative legal owner of the mark in France) refused to intervene, showing the need of designating a temporary custodian of the mark in France, for the sole purpose of conservation of the property.

The order of February 15, 1905 (granted in Chambers and subsequently annulled by the Court of Appeals, as stated above) assumed to give the liquidator the custody of the foreign trade-marks upon the theory that (1) they had been transferred to Abbe Rey who was found to be not the real owner, but merely an "interposed person," and (2) that the liquidator must take care that the trade-marks, which are the most important accessories to the business, be not imitated and do not fall into public property, and that the rights which are attached thereto be preserved by all proper transfers and renewals in all countries (Record, p. 757). We remark in passing that these supposed conditions do not exist in the United States. The United States trade-marks were never transferred to the name of Abbe Rey, and the real owners, the complainants, are not disqualified to protect their trade-marks in this country. In fact they have always protected their marks in this country and are still doing so. They are in particular defending themselves from the "protection" which the liquidator is extending to said marks.

The foregoing citations are sufficient to show that whatever authority was granted to the liquidator in respect of the trade-marks of the complainants, was granted as a measure of urgency, and was intended to be exercised by him primarily *for the protection of the mark from fraudulent imitations.* He was given power to act as the *conservator* of rights which might be lost or suffer prejudice because of the *legal disqualification* of the owners of those rights to appear in Court, or to take any measures for their protection. The use which the liquidator has attempted to make of the authority so conferred upon him, has been to *promote* a fraudulent and deceptive employment of the very marks which he was appointed to protect, and to incite the defendant to become the despoiler of the rights of the Monks in a country where no legal disability rests upon them.

It is clear that the liquidator's acts (assuming that he has attempted to give authority for the defendant's infringe-

ment, which is not satisfactorily proved since Cusenier declined to produce his contract with Lecouturier, Record, pp. 38–9), are a perversion and misuse of the authority conferred upon him under the French law of 1901.

The foregoing is a sufficient reference to the decisions of the French Courts for present purposes. We give in "Appendix D" (p. 94) a complete review of these judgments.

In consideration of the matters presented above it seems clear that the approval by the French Courts of the actions of the liquidator in respect of the trade-mark rights of complainants *in France* does not warrant the inference that the same Courts would (if called upon to decide such question), decide that the defendant has the right to use complainants' trade-marks *in this country*. The actions of the liquidator in France were warranted and judicially sanctioned for the sole and sufficient reason that the Order of Chartreux had been "disallowed" under the French law, and hence was non-existent in France, and was incapacitated for that reason to protect its ancient trade-marks from unlawful appropriation. Inasmuch as no such disability exists in this country, it would logically follow that, if the questions now before this Court were submitted for decision to the French Courts, their decision would be in accordance with our contentions.

In this argument we are fully supported by the decision of the French Court of last resort (the *Court of Cassation*) in a case presenting certain analogies to that at bar. This was the case of the COMPAGNIE GENERALE DES ALUMETTES (FRICTION MATCHES).

This Match Case arose out of the French law of 1872 which made the manufacture and sale of matches in France a State monopoly, and appropriated the business of the then manufacturers of matches, paying an indemnity therefor. The *Compagnie Generale des Alumettes*, which was the assignee of the monopoly thus created, undertook (as the liquidator's assignee in the present case has done) to exercise ownership of the names and trade-marks of the dispossessed manufacturers not only in France, but also *in foreign countries*. The case went up to the Court of Cassation which decided that the law was not operative outside of French territory, and that it left the manufacturers in the possession of their foreign trade-marks. In the match case the business did actually pass to the

State and its grantee, and, moreover, an indemnity was paid for the appropriation thereof. *A fortiori*, in a case where the business did not pass, where the act was not an act of confiscation, but simply one defining the political status of certain associations, and where no indemnity was paid, the ownership of the foreign trade-marks would not be affected (See Weiss' Opinion, Tr., p. 765–770).

More than this, the Associations Act of 1901 does *not* even apply to *all* the territory where French sovereignty is exercised. M. Decrais, the Minister of Colonies, declared this formally in the French Chamber of Deputies in the sitting of March 29, 1901, when the passage of this law was under consideration; he said the law could not be applied to the Colonies and to some recent possessions, and gave reasons therefor. This matter is reported in the French Official Journal of 1901, Chamber of Deputies, page 1033; it is discussed at length in Opinion of M. Weiss (R., pp. 751–5).

There can be no doubt, we submit, that the Associations Act of 1901 is (as declared by the Court of Appeals at Grenoble, *supra*) an Act of *police* and *safety*, strictly limited in its force and effect to the territory of France. Manifestly, if the *direct* provisions of the law have no extra-territorial effect, the *indirect consequences* of its enforcement locally cannot have such effect. It was no part of the purpose of the law to confiscate the business of the Carthusians and take possession of their French trade-marks. The Courts appointed a receiver to take possession thereof, pending a final determination of the question of their ownership, simply as a matter of "urgency," and because the owners were disqualified in France to take the action necessary to protect them. If the Act does not impair the status of complainants, as a voluntary religious association in the United States (which no one will pretend), then certainly it does not and cannot affect their title to property, corporeal or incorporeal, situate in the United States and cognizable by the Courts thereof.

If, however, the decrees of the French Courts had attempted to vest in the receiver, or in any one else, the right to use these trade-marks and labels in the United States in order to promote the sale of liqueurs not made by the Monks, such attempt would be wholly futile and without effect to divest the

said Monks of their property in their United States trade-marks and in the good-will of their business in the United States.

The decisions rendered in various foreign countries where this litigation has been carried on (with the exception of the decision in Tunis), are *unanimous* in holding the "Associations Act" to be a law of "police and safety," and, as such, that it can have effect only *within* the boundaries of France. It is submitted that the sole object of the Act (as far as the Monks are concerned) is to prevent these Monks, as an Order, from enjoying a legal existence *in France*, and from holding tangible property there. The Act (and the French Courts in enforcing it) did not seek to penalize the Monks further than by refusing them authorization and by the taking possession of their property left *in France*. The decisions of the Tribunal of Grenoble (see p. 104), and the Tribunal of Commerce (see p. 109), are of themselves conclusive proof of the soundness of this argument. These very decisions, which enable the Monks to import into France the liqueurs they are now manufacturing in Spain, show that the Monks are *legally*, even according to the French law, carrying on their business at different places outside French territory. The legal situation is the same as if the Monks had moved their establishment to Spain (and thus had been without the jurisdiction of France) before the enactment of the law of July 1, 1901.

Regarding the New Labels Employed by Complainants and the Defense of Abandonment.

After the compulsory transfer of their manufacture of liqueurs from France to Tarragona, Spain, the Pères Chartreux adopted a new series of labels having very conspicuous differences in appearance from the labels used by them when the manufacture was carried on in France. These new labels have been used generally since that time, but not to the entire exclusion of the old labels, complainants having, by advice of counsel and as a matter of abundant caution, continued the use in this country of the old labels to a limited extent (see Record, p. 639, Qs. 16, 17; p. 654, Qs. 9, 10, x-Qs. 12, 36).

In view of these facts the Court below held that "the Monks, since establishing themselves at Tarragona, have *de*

facto, though not *de jure* abandoned the old labels and insignia."

It would seem from this statement, and from the paragraphs which follow it in the opinion of the Court below, that the Court regarded the discontinuance of the use of the old labels by complainants as affecting in some way the merits of the controversy. But if, as the Court held, and as is a necessary conclusion from the facts, complainants had "not *de jure* abandoned the old labels and insignia," but had simply *discontinued their use* (and that not entirely) we do not see how the rights of complainants in the premises can be in any degree impaired by the fact stated. Even if complainants had definitely and expressly renounced the use of their old labels and marks, and had declared their intention never to use them again, neither this defendant nor any other person would thereby derive the right to adopt the discarded labels and marks for the purpose of competing with their rightful owners. The fact that an individual has discarded a well-worn and well-known suit of clothes does not give to another person the right to wear it for the purpose of personating, and thereby getting possession of the property of, its former owner.

But more than this, the statements in the opinion of the Court below regarding the discontinuance of the use of the old labels applies only to the general "make-up" of said labels. Those statements *do not apply at all to the essential matter in controversy*, to wit, the use of the trade-mark "Chartreuse" and its derivatives. *Complainants have not, even for the briefest period of time, discontinued the use of that trade-mark.* What they have done is to use it in the form "Chartreux" instead of "Chartreuse"; and this they have done for the obvious and commendable purpose of avoiding all question whether, in view of the change of location of their factory, the words "Gde. Chartreuse" or "Fabriquée à la Gde. Chartreuse," might be held to be misleading or deceptive.

In our opinion complainants have a perfect right to continue the use of their ancient trade-marks in the *precise forms* in which they have always used them; and we maintain this proposition notwithstanding the opinion of the majority of the Court below that it would be "a falsehood and a fraud on the public" to say that the liqueur made at Tarragona was

"Fabriquée à la Gde. Chartreuse." Those words, as commercially used, signify simply that the liqueur was the original and well-known product of the monks of the Chartreuse. That fact being guaranteed, there could not possibly be any deception or fraud on the public, no matter where the article was made. The decision in the Angustura Bitters case, and other decisions cited above, sanction the continued use of a trademark having originally a geographical significance, after removal of the factory from the place which gave the product its name.

On the other hand, it manifestly *is* a fraud on the public for the defendant, or any other person than complainants, to use the words "Fabriquée à la Gde. Chartreuse" on any liqueur other than the genuine Chartreuse. What made the property in question the "Grande Chartreuse" *was the presence there of the Pères Chartreux.* To apply those words to a product made in that vicinity (for, in fact, defendant's liqueur is said to be made at Fourvoirie, not at the old monastery at all) after complainants have departed, and after their former residence has ceased to be the "Grand Chartreuse" in any sense pertinent to the issues herein, is a falsehood and a fraud both upon the complainants and the public.

Touching the contention of abandonment, on which defendant placed much reliance in the courts below, Judge HOUGH said at Circuit:

> "The defense now under consideration is affected by the same fallacy as the first, viz., the thought that the liquidator is the successor of the monkish industry."

Perhaps the shortest and most effectual answer to the defense of abandonment is the fact that when defendant attempted to use the said marks and labels, complainants, without delay, asserted their rights thereto in this country, and in every country where those rights were thus violated, by bringing and vigorously prosecuting (and it may be said with invariable success outside of France and her dependencies) suits for their maintenance and protection.

The action of complainants in changing the wording of their labels, so far from affording any warrant to defendant

and others to use their old labels, in reality adds to the force of complainants' appeal to the protection of the Court. Having been constrained for the reasons stated to make changes in their labels they are entitled, in a *special* way and to an unusual degree, to protection against damage until such time as may be necessary to make the public fully acquainted with these changes, and to make it known to all customers and users that the liqueur of the Carthusian Monks is that sold under these new labels. While the matter is in this transition stage complainants should certainly be protected from unfair competitive attack by an imitation Chartreuse put out under the labels and packages which, heretofore, have always accompanied the genuine Chartreuse made by complainants.

The act of complainants in making this change in their labels amounts also to a strong declaration that the thing of value to be protected, and that which the old marks did protect until complainants' business became a pawn in the game of French politics, was and is *the personal reputation of the complainants as manufacturers of liqueurs and cordials.* It signifies that complainants can, in time, do again what they have done once before, namely, make an arbitrary mark or label (in itself absolutely valueless) a thing of great value because, and solely because, of the merit and reputation of the commodity which it identifies, and the personality of its manufacturers.

Finally, it is manifest that, even if complainants had discontinued the use of their ancient trade-marks and labels, such discontinuance would not give to defendant the right to appropriate and use said marks and labels in competition with complainants, and especially when the public were likely thereby to be deceived as to the origin of defendant's goods.

If the old marks and labels have come to signify in the minds of the public a liqueur made by the Carthusians, no one can be permitted to use those marks in this country in connection with a product not made by the Carthusians. Plainly, therefore, it is quite immaterial whether or not complainants have discarded and wholly discontinued the use of their old labels.

The Court below recognized that the effect of the use by defendant of complainants' marks and labels must be to deceive the public, saying: "Although, as before stated, there

is inadequate proof of deception, we cannot close our eyes to the fact that the use of the old labels alone might easily induce a purchaser to take defendants' instead."

And it might truthfully be added that the prospect of accomplishing exactly that result is the only thing that makes complainants' marks and labels a desirable acquisition in the eyes of defendant.

In whatever light the matter is viewed it is plain that the appropriation of these marks by defendant has the effect of giving to its product the benefit of the reputation acquired by complainants' product, which is the very reason why defendant desires to use them.

We cannot more appropriately close the discussion of this defense than by quoting the conclusion reached thereon by the Circuit Court (156 F. R., 1018):

> "The second defense is based upon the admitted fact that, finding the French market for Chartreuse made in Spain and bearing the old labels closed to them by French law, complainants devised a new form of package, wholly unlike the old, and have for some years pressed that upon the market both in Europe and America, at the same time warning the public by advertisement that the old label and bottle no longer denotes the genuine Chartreuse of the Carthusians. This is all true, with the addition that complainants have taken care to put up some liqueur under the old label and vend it, in order to negative intentional abandonment while litigations more or less resembling this cause have been pending in most countries other than France.
>
> "The defence now under consideration is affected by the same fallacy as the first, viz: the thought that the liquidateur is the successor of the monkish industry. Nothing could be further from the truth. He and all claiming under him are rivals in business, enjoying the advantage of governmental protection in the country of his appointment.
>
> "If one entitled to a trade-mark does abandon it, that does not justify a rival in appropriating the same and using it to induce the public to believe that the rival's product sold under the old label is the same thing

so long and favorably known thereunder and still being sold under the new label by the original proprietor. The result of a suit to enjoin such competition cannot I think be doubted.

"The only difference between the case supposed and that at bar is that the rival's right to the label and the use thereof arises from the coercion of a foreign statute and proceedings thereunder, with which from a foreign point of view we are not concerned, but which by every canon of American law amount to confiscation."

The Decision of the Circuit Court of Appeals.

(164 F. R., 25; Trans., p. 1582.)

We have already dealt with the effect of the changes which complainants made in their bottles and labels after transferring their factory to Spain, showing that these changes do not in any way or degree affect their right to the relief prayed in the bill of complaint, and in particular that they do not affect their right to an injunction restraining defendant from using the word "Chartreuse," or any derivative thereof, as a trade-mark for liqueurs.

We have also pointed out the remarkable inconsistency in the decree herein as modified by the Circuit Court of Appeals, in that, after having explicitly adjudged and decreed "that the word-symbol 'Chartreuse,'" as applied to liqueur, is a good and valid trade-mark in this country, and has been and is now "the sole and exclusive property" of the Carthusian Monks, the Court grants to defendant the right to use *that very trade-mark*, and to use it, moreover, with precisely the same verbal accompaniments, and upon labels and bottles precisely the same as used for many years by complainants —omitting only certain ecclesiastical symbols and a fac-simile signature. That these two parts of the decree are absolutely inconsistent and contradictory is apparent at a glance. Manifestly, in order to give effect to the first paragraph of the decree, the fourth paragraph should be restored to the form in which it was originally passed by the Circuit Court.

Only one other point in the opinion of the Court below calls for discussion. That Court holds that complainants have

not shown by sufficient proof that defendant's product is not substantially the same as the genuine Chartreuse; and the learned judges seem to consider it necessary to the proof of this allegation of the bill of complaint, that complainants' secret formula should be in evidence for purposes of comparison with that of defendant. They say:

> "It is, of course, unfortunate for the complainants that their liqueur is made under a secret formula which, naturally enough, they decline to disclose; but without such disclosure we are unable to say with any degree of certainty that the two liqueurs are not substantially alike."

Again they say:

> "We intend no criticism of the complainants' course in this regard. It is undoubtedly more profitable for them to maintain secrecy, and they are under no obligation to do otherwise. But they cannot complain if the court is unable to find that the defendant's liqueur is materially different from theirs without knowledge of its ingredients and the process by which they are combined."

As to this we submit *first*, that proof of the formula and method of compounding the genuine Chartreuse is not necessary in order to establish the allegation of the bill of complaint in this regard; and *second*, that evidence of complainants' formula would not enable the Court to make a comparison, for the reason that *defendant* has refused to produce *its* formula, alleging it to be a valuable secret. This second proposition needs no further comment.

The proof that defendant's product is not the genuine Chartreuse, but is a substantially different product, is ample. In the first place, we submit that the words "not genuine," or "spurious," when used in such a case as this, mean that the article so designated is not the product of the original and recognized manufacturer. The imitation product might be composed of precisely the same ingredients as the original, and might be as good or even better; but it would be none the less "spurious" if offered in such a way as to induce the belief that it was the product of the original manufacturer of the

article so named. It might be an article such as soap, or washing blue, or any of the numerous commodities whereof the formula and mode of preparation were not secret at all. It is enough, therefore, in order to sustain the allegation, that defendant's article is an "imitation," "not genuine," but "spurious," to show that it is not made by complainants, or under their direction.

But the proofs go much further than this. It is shown by the evidence that "Chartreuse" is a highly complex product. Its constituents include plants of many different sorts, some of which are cultivated, some wild, some exotic; and these plants come from many different parts of the world (Tr., p. 176, Qs. 82–85; p. 177, Q. 101; p. 178, Qs. 102, 110, 113). Some of these plants are found (but not exclusively) in the vicinity of the old monastery, and these are procured and shipped to the complainants at Tarragona (Tr., p. 266, Re-x-Q. 14; p. 89, Qs. 44–53).

Furthermore, the genuine "Chartreuse" is made according to a secret formula or recipe, which is esteemed to be of such great commercial value that elaborate precautions are taken to safeguard its secrecy. It is in the care of two custodians who are appointed by the Superior-General of the Order, and whose identity is concealed (Tr., p. 175, Qs. 64–69).

It is a matter of adjudication in France (Judgment of May 18, 1905, Complt.'s Ex. "S.", p. 701) that "the secrets or processes of manufacture have been carried away by the Chartreux as an unseizable property," and that the trademark "was thus *separated from* the product of which it had up to that time guaranteed the production" (p. 712, fol. 2782).

It, moreover, appears by the testimony of Mr. Tièche already cited, that defendant's liqueur is made from a formula devised by that witness in 1904, which he arrived at by the process of "groping in the dark," guided solely by his taste.

From these undisputed facts we may safely conclude that defendant's product is not the same as the original and genuine "Chartreuse."

This is confirmed by the judgment of the Court at Grenoble last cited (Complts'. Ex. S, Tr., p. 701), in which it is stated (pp. 711, 712) that

> "in the present suit Lecouturier, receiver of the properties of the Congregation of the Chartreux, is indeed

> in possession of the mark of the Grande-Chartreuse, but the products which he is having made at Fourvoirie and which he sells to the public under this mark, *are not those which the Chartreux Fathers have made according to their process of manufacture and have sold up to the time of their expulsion from the Convent of the Grande-Chartreuse.*" (Italics ours.)

We therefore submit that the charge of the bill of complaint to the effect that defendant's product is not the genuine "Chartreuse" but is a spurious imitation, is amply sustained by the proofs.

The Court below says :

> "The common sense solution of the problem, it seems to us, is to compel both parties to tell the truth about their goods."

With this "solution of the problem" we should be well content, for its adoption would prohibit defendant from offering its product to the public as "Chartreuse," the *truth* being that it is not "Chartreuse." The enforcement of this solution against defendant would require the latter to give its product a distinctive name, and to place its product upon the market in packages, and under labels, substantially different from those used by complainants.

In this part of our argument we are supported by the Judgment of the English House of Lords, as will be seen from the following extracts :

> "The monks were forcibly expelled from the country and all their property in France, including their distillery and their French trade-marks, was confiscated and sold. The particulars of sale purported to comprise the commercial business of the monks, and the 'customers and good will attached to the business.' But two things that belonged to them—the secret of their manufacturing process and the reputation which their liqueurs had acquired in foreign countries, and notably in England—were incapable of being seized or confiscated" (opinion of Lord MACNAGHTEN).

"Whether the secret imparts any virtue to the liqueur, or whether the business and efforts of Lecouturier's assignees, working in the old locality, have succeeded in producing a liqueur as good or better, appears to me to be irrelevant" (citing the Yorkshire Relish Case). "Whether, as Lord DAVEY in that case said, the two articles are 'a wonderful match' does not seem to me to be in point, except in one particular which is not favourable to the Appellants. For, my Lords, the nearer you can bring in point of appearance, qualities, or properties, one article or set of goods of your manufacture to others already protected by a trade-mark *the clearer is the duty to avoid representing your goods as those others.* Nor do I doubt that the use of the word 'Chartreuse' by the Appellants would of itself stamp the article which they produced with the reputation which it ought not to possess, viz., that the liqueur was made from the Monks' secret recipe" (opinion of Lord SHAW of Dumfermline. Italics ours).

Questions of Fact Raised by the Proofs.

The greater portion of the testimony introduced on behalf of the defendant relates to two matters of fact, neither of which is at all material to the issue. These matters are (1) the contention that certain plants, (and especially a plant commonly known as "vulnerary", or in colloquial French as "venerelle", botanically "*hypericum numillarium*") grow only in the vicinity of the old Convent and upon property owned by the French Government; and (2) the contention that the liqueur made by defendant closely resembles in taste the original Chartreuse, more closely (some witnesses aver) than that made by the Chartreux immediately after their expulsion from France.

According to one theory of defendant it is immaterial who makes the liqueur, or what formula is followed, or what plants are used (so long as some of them are gathered near the old Convent), or in what proportions their essences are blended. The theory is that so long as the product is made at or in the vicinity of the old factory, defendant should be permitted to

sell it to the American people as genuine "Chartreuse", guaranteed as such by the trade-marks of the Carthusians, by facsimile signature of their former Procureur, and by the ecclesiastical symbols of the Order of the Chartreux—the orb, cross and seven stars.

In order to sustain this theory and make it applicable to the present case, it was necessary for defendant to show that the Chartreux are no longer able to procure the plants which grow in the vicinity of the old Convent. Defendant introduced some testimony in the attempt to establish this, but utterly failed to do so. On the other hand, complainants have clearly proved that they obtain the same plants, gathered in the same locality, by the same persons who had formerly supplied them.

Before discussing this testimony we would submit several pertinent remarks which show that, even if defendant had succeeded in proving that the Monks were no longer able to produce their former product, that fact would not benefit the defendant.

1. If the Monks were unable for any reason to continue making a liqueur identical with their former product, that circumstance might be material to the question whether *they* could properly continue the use of their old marks in this country. It could not possibly confer upon defendant the right to use said marks.

2. Complainants' formula for Chartreuse being unknown, it cannot be maintained that any particular plants, alleged to grow only in the vicinity of the old Convent, were used by the Monks in the fabrication of their Chartreuse. Even though it be shown that the Monks were in the habit of gathering or purchasing a particular plant, it does not follow that they employed it in making "Chartreuse".

A great amount of testimony, for example, has been taken *pro* and *con* upon the issue whether the plant known as vulnerary (or "venerelle") grows anywhere except in the old Convent of the Grande Chartreuse. On this point defendant took the testimony of Messrs. Doudey, Perret, Fège, Georges, Claverie, and of Mrs. Merlin and Mrs. Grenier.

Mrs. Grenier (Record, p. 896) says that she is a cultivator, is now 47 years old, and that she gathered plants when she was young (Q. 8), gathered principally "venerelle". She

does not think she ever gathered it anywhere but on the estate of the Grande Chartreuse. Asked if she ever heard that it grew elsewhere (Q. 19) she prudently answered:

> "There might have been some also, but for we others, it was our country, to pick it there. But higher up there might have been some also. All the mountains were not gone over, there are too many of them."

Mrs. Merlin (Record, p. 901) also picked plants for the Carthusians. She says that vulnerary grows only on the mountains belonging to the estate of the Grande Chartreuse; but she admits (x-Q. 2) that she had never looked for it elsewhere.

Mr. Fège (Record, p. 964) is a corporal of waters and forests. He describes vulnerary and states the altitudes between which it grows (p. 965), and says (p. 966, Q. 15) that he never saw it before he came to the Grande Chartreuse. In answer to Q. 25 he admits that it grows elsewhere than on the property of the State.

This is a fair sample of defendant's testimony on this point, and it will be seen that it is very far from proving that vulnerary can be gathered only on property belonging to the State.

On the other hand, complainants showed by a large number of witnesses that vulnerary grows abundantly in places other than the property of the State. Among the witnesses who so testify are J. C. Rey (Record, p. 349), Jules Fetaz (p. 359), I. Rey (p. 363), L. M. Belin (p. 370), A. Baboin (p. 387), S. Rey (p. 377), A. Rey (p. 408) and others. Most or all of these witnesses have gathered the plant in question and are thoroughly familiar with its habitats.

Mr. G. Villard (Record, p. 429) testifies that he is a chemist and druggist residing at Grenoble, that he is very familiar with the plant called vulnerary, that it is common in the group of the Chartreuse (Q. 8) and is very easily procured (Q. 9). The witness procures it in quantities whenever required (Q. 10). All the druggists in Lyons sell these plants (Q. 11). The witness himself has gathered vulnerary in various localities (Q. 18).

It is not necessary to cite this testimony at length since it

will hardly be disputed that defendant's attempt to show that vulnerary can only be gathered on the domain of the State, and hence (inferentially) that complainants cannot obtain a supply of it, has completely failed; and that, on the contrary, the proofs show that vulnerary grows in many places, that a supply of it is always obtainable, and that the Chartreux have an ample supply of the same plants which they have always used in the manufacture of their Chartreuse liqueur.

We have already cited the testimony of Père Baglin to the effect that the Chartreuse liqueurs manufactured by complainants at Tarragona are made precisely in the way they were made in France, from the same plants, and according to the same recipes. There has been no change at all. Some of these plants come from the vicinity of the old Convent (p. 177, Q. 101 *et seq.*).

The testimony of Mr. Villard, already cited, also shows that certain plants are gathered for the Chartreux in the vicinity of their old Convent and forwarded to them. This witness testified in his first deposition (R., p. 84) that he and his predecessors in business have maintained business relations with the complainants since 1861 (p. 86, Q. 16), the business consisting in supplying them with certain plants, some exotics, some wild, coming from all parts of France, and especially from the group of the Grande Chartreuse. The wild plants he furnished to the Carthusians always in a dry state (p. 88, Q. 39). He continues, since the expulsion of complainants from France, to supply them with the same plants as formerly (Qs. 43–54, inclusive).

The liquidator was very desirous of procuring the information which this witness could give concerning the plants which he supplied to the Carthusians, and wrote him a letter under date of August 30, 1904 (R., p. 433) asking him to furnish for the manufacture of his liqueurs "the druggists' articles which I may have need of, as you did formerly to the Chartreux." To this the witness replied (p. 434, Q. 25) that his conscience and friendship for the Carthusian Fathers were opposed to any such arrangement.

Regarding the Similarity of Defendant's Liqueur to the Original Chartreuse.

Another proposition to which defendant has directed much testimony is that the product made by the defendant resembles the original Chartreuse more closely *in taste* than that made by the Monks after their location at Tarragona. (See depositions of Mumford, R., p. 992; Willis, p. 999; Moore, p. 1007; Parker, p. 1014; Hasse, p. 843; Boutin, p. 851; Régli, p. 1101; Delair, p. 891.)

On the other hand complainants produce witnesses who testify that, while the very first product made by them at Tarragona differed slightly in flavor from the product made by them in France, this difference was entirely due to the difference of age, since it requires some little time to remove crudeness of taste and produce mellowness and smoothness (See Riviere, R., p. 59; Dubonnet, p. 15; Brezum, p. 27; Turner, p. 581; Pheysey, p. 592; Humphreys, p. 600; Cunningham, p. 604; Masters, p. 623; Davis, p. 630; Cornuchet, p. 341; Restell, p. 616; Chellé, p. 333).

That there should have been some little disturbance due to the breaking up of the old establishment, and the relocation of the manufacture at the new place, was to be expected; but we are unable to see that this has the slightest bearing on the merits of the case.

Defendant's witness Parker gives a good indication of the value of such testimony as this, that is to say of opinions based on the sense of taste. Speaking of a test of these various liqueurs in which he and others participated he said (Record, p. 1029, x-Q. 115) "that they all varied in the most amusing manner."

Many of the witnesses called by the defense and named in the above list are waiters (or "butlers" as they prefer to call themselves) at the well-known "Café de la Paix" in Paris; and their business is to serve liqueurs to idlers (mainly visitors in Paris) who spend their afternoons at this out-of-door lounging place eyeing the passers-by. It was to be expected that, to such an indiscriminating clientele, any passable imitation would be acceptable. The testimony of these "butlers" as to the merits of the liquidator's product is not

very convincing. We believe that it will not be profitable to enter into a detailed discussion of the testimony of these witnesses.

It may be observed in passing that the ability to produce an imitation of the genuine Chartreuse so good as to be indistinguishable in flavor therefrom does not have the legal effect of conferring upon the defendant the right to use complainants' trade-marks in marketing its imitation.

> "Although the false article is as good as the true one, the privilege of deceiving the public even for their own benefit is not a legitimate subject of commerce."
>
> *Worden vs. Cal. Fig Syrup Co.*, 187 U. S., 516, 529.

On this point the Court will doubtless concur with the opinion of Lord SHAW of Dumfermline quoted above.

As to the Use of Plants in a Dry State or in a Green State.

Another of defendant's contentions is that, in order to make a good liqueur, the essences should be extracted from the plants (or from some of them) while the latter are in a fresh or green state, and hence that in order to secure a proper result the manufacture must be carried on at or near the place where such plants grow. It is obviously intended to argue that this condition applies to plants growing in the vicinity of the former Grande Chartreuse.

As a reason why the defendant should be allowed to appropriate complainants' trade-marks the foregoing seems to be scarcely worthy of a reply; but we make the following observations:

1. Since the formula and mode of preparation of the genuine Chartreuse are unknown, it is impossible for any one not in the secret of its preparation to say whether plants freshly gathered and in the green state are, or are not, essential to its manufacture.

2. Complainants' testimony shows that the plants gathered in the vicinity of the former Convent which were used in the

manufacture of Chartreuse were always used in a *dried* condition (Record, Baglin, p. 176, Q. 86, *et seq.*; Massignon, p. 159, Q. 14; Villard, p. 88, Q. 40).

From this testimony it appears that, if defendant, in making its imitation Chartreuse, uses only essences extracted from green or freshly gathered plants, it departs, in that respect, from the method employed in making the genuine Chartreuse.

Testimony Taken in the United States.

We believe it would be a waste of time to discuss the depositions of witnesses for defendant taken in this country. It is enough to say that the purpose of this testimony was to support the proposition that the word "Chartreuse" pointed to locality, and not to the personality of the manufacturers of the well-known liqueur. The testimony of these witnesses conspicuously failed to lend support to that proposition, which has already received sufficient consideration, particularly in view of the undoubtedly correct findings of the Court below and of the British Court of Appeal.

On the other hand complainants called a large number of witnesses in this country who testified in substance (Record, p. 643, Q. 6; p. 648, Q. 5; p. 650, Qs. 6–8; p. 659, Qs. 5, 6; p. 661, Qs. 5, 6; p. 667, Qs. 6, 7; p. 670, Q. 6; p. 673, Qs. 5, 6) that they attributed the popularity of Chartreuse to the well-known fact that it was manufactured by the Carthusian Monks.

Complainants' Exhibit, Aubry-Cusenier Co. Circular Letter.

For the purpose of showing the character of defendant's advertising, and the injury to complainants, we call the attention of the Court to this exhibit, which is found on page 697 of the Record. It was stipulated "that this is a copy of a circular letter sent out to liqueur dealers and the trade generally throughout the country, in October, 1904, by the defendant herein" (R., p. 637). On the last page of this exhibit ap-

pears both in French and English a copy of Lecouturier's letter to the "Temps," a newspaper of Paris. A copy of the "Temps" of September 20, 1904, which contains the letter in question, has been put in evidence as Complainants' Exhibit O.

As this circular letter was admittedly sent by defendant to "liqueur dealers and the trade generally throughout the country," one has only to read the letter in order to be advised of the source of the knowledge on the part of defendant's witnesses who testified in effect "that the Chartreuse Liqueur cannot be produced elsewhere but at the Grande Chartreuse" and that "the plants gathered in this admirable domain derive from the ground aromas and qualities which are *only* found at the Chartreuse." But when complainants' witnesses were cross-examined along these lines, their replies were interesting in that they showed, we might say, universal prevalence of the belief that Chartreuse always was and is now made under a secret formula or process (Record, p. 645, x-Q. 15; p. 649, x-Q. 11; p. 651, x-Q. 14; p. 664, Re-d. Q. 20; p. 665, Q. 5; p. 668, x-Qs. 10, 11; p. 671, x-Q. 10; p. 674, Re-d. Q. 17). What the liquidator himself had asserted as a fact in his letter, but could not prove on his cross-examination, defendant's witnesses in this country had no hesitancy in declaring to be their understanding (Record, Chauvelot, p. 1285, Qs. 11, 12; Aubry, p. 1294, Qs. 12, 13; Pierce, p. 1311, Qs. 15–18; Medary, p. 1316, Qs. 7, 8).

This circular letter is absolutely misleading, and particularly the statement over Mr. Aubry's name that "nothing has been changed in the putting up of the products of the Grande Chartreuse." Mr. Nova, one of the partners of the firm of Batjer & Co., now and for many years U. S. selling-agents for the products of the Monks, says that the issuance of this circular hurt their sales of the genuine Chartreuse "very materially" (R., p. 653, Q. 7). Mr. Batjer, senior partner of Batjer & Co., testified "it had a bad effect on our business; thinking that really that was the genuine Chartreuse, several of our customers canceled their orders" (R., p. 638, Q. 7); "We received a number of letters and have some of them here" (Q. 8). (See Complainants' Exhibit, Koenig Letter cancelling an order for twenty-five cases, and Complainants' Exhibit, C. Jevne Co. Letter, R., p. 699).

Defendant's witness Pierce says that this circular was brought to his attention and that he purchased "possibly one hundred cases" of the Cusenier Co. (R., p. 1310, Qs. 8–10). We may fairly conclude that this purchase was made solely as the result of the statements made in this circular, because Mr. Pierce testified that for years before and since buying the Cusenier Co. liqueur he had handled the genuine Chartreuse under the old labels and trade-marks.

Mr. Dresdner, travelling representative of defendant, says he made to Mr. Haan "exactly the same" (R., p. 1303, x-Q. 19) representations that are made in this circular letter; and Mr. Haan was thereby induced to give an order to the Cusenier Co. believing it would be filled by genuine Chartreuse made by the Monks (R., p. 649, Re-d. Qs. 16, 17).

In view of the foregoing specific instances, it may safely be presumed that most, if not all, of the orders received by the Cusenier Co. for its so-called "Chartreuse" were secured by means of the statements contained in this circular letter, together with similar oral misrepresentations made by its agents.

The Contempt Proceedings.

The sole question raised by the motion to punish for contempt was whether defendant had violated the injunction by using the words "Pères Chartreux" in the manner complained of instead of the words "Carthusian Monks." (See Scott Affidavit, Tr. on Petition to Supplement Record, p. 5.)

On its labels used subsequent to the decree and injunction order herein, defendant (the Compagnie Fermiere) announced that it was "Successor to the Liquidator of the Property of the *Pères Chartreux*."

Mr. Lecouturier was appointed "Liquidator of all the property and assets of said alleged Order of Carthusian Monks Convent La Grande Chartreuse," according to defendant's answer herein (Tr., p. 840, fol. 22). The Judgment of the Grenoble Court of March 31, 1903, appoints Lecouturier "Liquidator of the properties of the so-called *Congregation* of the Chartreux" (Tr., p. 1505, fol. 1975). The Court of Cassation, in its Judgment of July 31, 1906, refers to Lecouturier as

"Liquidator and Administrator-Receiver of the dissolved *Congregation* of Carthusian Monks" (Tr., p. 1411, fol. 1727). All through the record of this cause it appears that Lecouturier was appointed Liquidator of the property of the "Carthusian Monks" or of the "*Congregation*" or of the "*Order* of the Chartreux."

In none of the official documents or decrees is Mr. Lecouturier designated as Liquidator of the "Pères Chartreux," nor did he ever himself assume that designation. Those words were never used by the Liquidator, or those claiming under him, in connection with the business of selling liqueurs until, as a consequence of the extensive advertising by complainants, they had acquired a substantial commercial value.

In this connection, the attention of the Court is called particularly to the Judgment of the Court of Grenoble of May 18, 1905 (Tr., p. 701) which was rendered in a suit brought by Lecouturier, in France, to enjoin the Monks from the use of the words "Pères Chartreux" as a designation for their liqueur, which suit terminated in favor of the Monks, the Court holding that Lecouturier "*has no right to the words 'Pères Chartreux,'*" that that name had never formed a part of the business which had come into the liquidator's hands (it never having been used until after the Monks went to Spain). This Judgment of the French Court is discussed at length in Appendix D hereof, at page 104.

This announcement made by defendant to the trade in this country, namely that defendant was the "Successor to the Liquidator of the Property of the *Pères Chartreux*" could have had but one purpose, and that was to appropriate the good will and personal reputation of the complainants. Hence that announcement was in direct violation of the injunction, whereby defendant is enjoined

> "from in anywise attempting to make use of the good will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

Prior to the removal of the complainants' business from France the conspicuous words on their labels were "Grande Chartreuse"; and hence these words were what defendant de-

sired to appropriate; but since that event the conspicuous words on complainants' labels have been "Pères Chartreux," and hence the use of these words is what defendant now covets.

Defendant attempts to justify its conduct by the argument that "Pères Chartreux" and "Carthusian Monks" are terms of identical import, the former being merely the French translation of the latter. But this is, we submit, a very transparent subterfuge. There could obviously be no legitimate object in translating the words "Carthusian Monks" into French or other foreign language, upon labels used in an *English speaking country*. The only and the sufficient explanation for this conduct of defendant is the fact that, during the past few years, complainants have adopted and heavily advertised the expression "Pères Chartreux."

Conclusion.

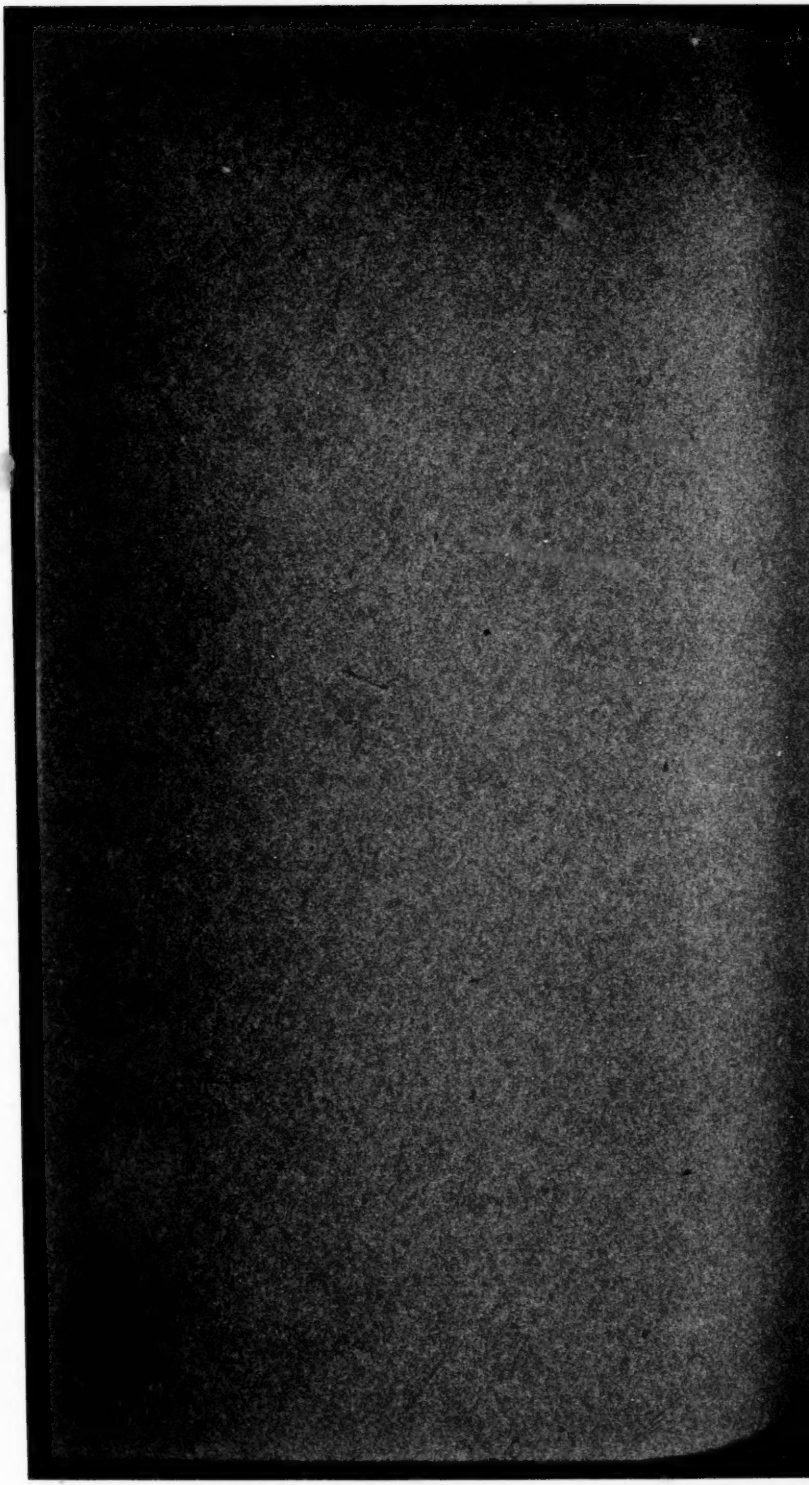
We submit that the decision of the Circuit Court on the motion to punish for contempt (Tr., p. 15) should be adopted as the judgment of this Court.

On the main case we submit that the decision of the Circuit Court of Appeals, so far as it modified the decree entered by the Circuit Court, should be reversed.

Very Respectfully,

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Counsel for Père Baglin, &c.

New York, December, 1910.



APPENDIX A.

IN THE HOUSE OF LORDS.

Friday, 18*th March*, 1910.

Lords present—

THE LORD CHANCELLOR (LORD LOREBURN),
LORD MACNAGHTEN,
LORD ATKINSON,
LORD COLLINS, and
LORD SHAW OF DUNFERMLINE.

BETWEEN

LECOUTURIER and OTHERS.....*Appellants*

AND

REY and OTHERS.....*Respondents.*

LECOUTURIER and OTHERS.....*Appellants*

AND

REY and ANOTHER.....*Respondents.*

[*From the Shorthand Notes of Cherer, Bennett & Davis, 8, New Court, Carey Street, W. C.*]

SIR ROBERT FINLAY, K. C., MR. UPJOHN, K. C., and MR. SEBASTIAN (instructed by MESSRS. STEAVENSON & COULDWELL) appeared for the Appellants.

MR. P. O. LAWRENCE, K. C., MR. YOUNGER, K. C., and MR. SARGANT (instructed by MESSRS. HOLLAMS, SONS, COWARD & HAWKSLEY) appeared for the Respondents.

The ATTORNEY GENERAL (SIR W. S. ROBSON, K. C.) and MR. AUSTEN CARTMELL (instructed by the SOLICITOR TO THE BOARD OF TRADE) appeared for the Crown.

JUDGMENT.

LORD MACNAGHTEN: My Lords, your Lordships, I think, are all agreed in holding that the decision of the Court of Appeal in both these cases is perfectly right.

The facts are not in dispute. The principle of law on which the Respondents, who were Plaintiffs in the action, rely, is well settled. It has been recognised and asserted over and over again in this House. There is no feature of novelty about the case unless one is to be found in the circumstances which led immediately to this litigation.

A religious community of great antiquity, known as the Order of Carthusian Monks, had, until lately, its principal seat and its headquarters near the Dauphiné Alps, not far from Grenoble in the Province of Isère in France, at a Monastery known as "La Grande Chartreuse." There was the residence of the Prior-General of the Order, and there was manufactured according to a secret process, a liqueur of several sorts and colours known all over the world as "Chartreuse." To this trade name and to the insignia by which they designated their manufacture the Monks had vindicated their exclusive right in many law suits in England, and they possessed several trademarks on the English register standing in the name of their procurator Abbé Rey.

In 1901, there was passed in France, a law called the Law of Associations, which declared illegal all unlicensed religious associations failing to obtain within a limited period authorisation from the State. The Monks of La Grande Chartreuse applied for the requisite authorisation but they did not succeed in obtaining it. Thereupon, in due course the Monastery of La Grande Chartreuse, with its dependencies in France, was dissolved. The monks were forcibly expelled from the country and all their property in France, including their distillery and their French trade marks, was confiscated and sold. The particulars of the sale purported to comprise the commercial business of the monks and "the customers and goodwill attached to the business." But two things that belonged to them—the secret of their manufacturing process and the reputation which their liqueurs had acquired in foreign countries, and notably in England—were incapable of being seized or confiscated. Expelled from France and exiled from their old home, the monks of La Grande Chartreuse carried with them the secret of their manufacture, and the power of securing the benefit of the reputation which their skill had gained for them abroad.

After their expulsion from France the monks of La Grande

Chartreuse transferred the headquarters of their Order to Lucca, in Italy, but they set up their business in Tarragone, in Spain. There, having made an arrangement with the Respondents, La Union Agricola, for the disposal of their output for a term of years, they commenced to make their liqueurs in the old way according to their old and secret process. The secret was jealously guarded and the manufacture was carried on throughout the whole process by the monks themselves. The liqueurs so made bore the insignia of the Carthusian Order and the old trade marks and labels, the only difference being a note to the effect that the liqueurs were now made at Tarragona.

Then followed a warfare in England waged with varying success. On the one hand were the Monks and La Union Agricola, on the other M. Leconturier, the liquidator appointed by the French Court to wind up the affairs of the dissolved monastery, and with the liquidator were the purchasers from him calling themselves La Compagnie Fermière de la Grande Chartreuse. The Monks fought to preserve the remnant of their property, which was beyond the reach of French law. The liquidator and the purchasers from him, who were not in possession of the Monks' secret, strove to supplant them in the English market by adopting their insignia, and representing that that they were the proprietors of the "genuine" liqueur "the old and world-renowned liqueur 'Chartreuse.'"

At the outset the monks were victorious. On the strength of the trade marks, registered in the name of their procurator, they stopped the importation into England of goods bearing their insignia and got up so as to represent or counterfeit their manufacture. Then by a contrivance which it is difficult to reconcile with the actual truth, the liquidator procured the English trade marks to be transferred to him, on the allegation that he was the assignee of Abbé Rey. This manœuvre turned the scale in favour of the Appellants, and the monks in their turn were prevented from using their old trade marks in England. The monks then brought this suit, and, at the same time, moved to expunge the last entry from the Register of Trade Marks. The Court of Appeal has decided in their favour; and the liquidator and the purchasers from him are now the Appellants.

The only plausible ground of Appeal urged at the Bar was

that under French law, and by reason of their purchase from the liquidator, the Appellants were justified in doing what they have done. To me it seems perfectly plain that by the very nature of things a law of a foreign country, and a sale by a foreign court under that law, cannot affect property not within the reach of the foreign law, or the jurisdiction of the foreign court charged with its administration. But it is certainly satisfactory to learn from the evidence of experts in French law that the Law of Associations is a penal law—a law of police and order, and is not considered to have any extra-territorial effect. It is also satisfactory to find that these legal experts confirm the conclusion which any lawyer would draw from a perusal of the French Judgments in evidence in this case, that the sale by the liquidator of the property bought by the Appellant Company, has not carried with it the English trade marks, or established the claim of the Appellant Company to represent their manufacture as the manufacture of the monks of La Grande Chartreuse, which most certainly it is not. I think both Appeals must be dismissed with costs.

Lord ATKINSON : My Lords, I concur.

Lord COLLINS : My Lords, I also concur.

Lord SHAW of DUMFERMLINE : My Lords, the Appellant, Mr. Henri Lecouturier, in his Statement of Defense, sets forth that he " is a French Judicial Officer, and in all his acts complained of in this action he has acted under the direction of the French Courts having competent jurisdiction, and in accordance with decisions given by them for the purpose of carrying into effect the enactments of the Legislature of the French Republic." He has, it is added, no personal interest in the matter. M. Lecouturier has sold the liqueur business in France with the trade marks in England to the Compagnie Fermière at La Grande Chartreuse, which company joins with him in his defence. The other Defendants are his agents in this country.

The Plaintiff and Respondent, Celestine Marius Rey, was for many years the Procurator of the Carthusian Order of Monks, residing at the Monastery of La Grande Chartreuse near Grenoble in France. Herbault the other Plaintiff and Respondent, is the General Superior. They sue this Action on behalf of themselves and all the other members of the Carthusian Order. That Order is a religious society founded

in the Eleventh Century, and it is said to hold or to have held property in various countries, including France and England. Part of that property consists of the Monastery of La Grande Chartreuse. It is maintained that the Order is in possession of a secret process or recipe for the manufacture of the liqueurs called "Chartreuse," and it is not disputed that the business of manufacture has been conducted by the Monks in that locality, that a trade of a profitable nature and of large dimensions has been built up in these articles, and that sales thereof have been conducted for many years past not in France alone, but in other countries of the world. In some of these countries trade marks for the liqueurs have been obtained. One of these countries is England.

One of the chief points to be settled in this case is as to the effect of a law passed by the Legislature of the French Republic, on 1st July, 1901, and amended on 4th December, 1902. A translation of this with certain brief supplements appears among the papers, as also a translation of decrees of 16th August, 1901, by Monsieur Loubet, French Minister of the Interior, made pursuant to Articles 18 and 20 of the law of 1st July. My Lords, the law and decrees cannot be perused without a consciousness of the importance of the subject-matter with which they deal, touching, as they do, at various points, the structure and development of French society and affecting its law and the property of French subjects in much detail. My Lords, the "comity of nations" is an expression which is familiar but necessarily indefinite. The attempts to fix it down into a set of rules of legal or binding effect, and the discussions which have accompanied such attempts, have been very fruitless. But (bearing in mind that we are dealing in the present case with the relations of French citizens, and a business whose centre was, and whose conduct was mainly in France) I take it at least that that comity tends towards encouraging the co-operation of civilized communities by giving effect, so far as may be, to the regulation by the Legislature and courts of the domicile of the parties, of the relations and rights of these parties. Such regulations should, upon all suitable occasions, be treated with most favourable regard, and with the desire to respect and apply the principles from which, so to speak, the central propositions emanate, so far as these can be

accommodated to the practice and requirements of foreign judicatures. Nothing, my Lords, in the slightest degree inconsistent with this appears in the judgments of the Court below, and I proceed further to say that I think it would be, so far as I can see, not acting in accordance with the true meaning and effect of the French Legislature and decrees, but acting contrary to that meaning and effect, to give them the application, beyond the territory of the French Republic, which is desired in this case.

Throughout all the legislation as to the necessity for associations being sanctioned after application by the Government, as to no religious congregations being formed (Article 13) "without an authorization given by a law which will determine the conditions of its work", as to the *ipso facto* dissolution of congregations not so authorised, and as to the sequestration of the effects and the appointment of an administrator and liquidator, and particularly throughout the regulations as to the conduct of the liquidator, the court to which he is answerable, and the realisation and distribution of property ingathered by him, I cannot trace anything, either express or implied, which suggests extra-territorial operation. And beyond the regulation of property within France as part of a scheme for dealing with a question reckoned to be of great social import in that country, I do not discern any intention, either expressed or implied, by the legislation or decrees to effect the transfer, or affect the holding of property in other countries to which the social and political problems, as French problems, did not extend. In short, and to take the present as an instance, I do not see anything conferring upon the liquidator of the property of the Carthusian Order a right to strip that Order of their possessions in all parts of the world. I do not think that what the French Legislature did can be read in this extreme sense. Whether effect would have been given by foreign courts to such legislation is, therefore, a question which does not really arise.

The species of property which the Respondents maintain are embraced within that committed to the Appellant, by his appointment of liquidator of the effects of the Carthusian Order, are certain trade marks registered in England. He has produced before the Register of Trade Marks the decree

of his appointment, and caused an application to be made at the British Patent Office for the entry of his name in the British Register of Trade Marks, as "the subsequent proprietor of the trade marks registered there on behalf of the said dissolved congregations" (all of which referred to the Grande Chartreuse), and such entry was made on the 2nd day of May, 1905. It is, of course, admitted that the formality of registration cannot effect the fundamental rights of the parties as they fail to be determined in this action.

The object of the action is to obtain an Injunction to restrain the Defendants from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the Plaintiffs. The second portion of the Injunction is against the ordinary case of passing off the liqueurs manufactured by the Defendants as the manufacture of the Plaintiffs. The true question is: "Who is entitled to use the term 'Chartreuse' as denominative of a special manufacture of liqueur?"

My Lords, having given much attention to the proof, I am of opinion that a sound Judgment thereon has been given by the Court of Appeal. I cannot presume to put my opinion otherwise than in these sentences of the Lord Chief Justice of England, which I respectfully adopt: "I have not the slightest doubt that for a great many years before 1901 the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included the outlying buildings, and whether the final product put into the bottles was actually bottled at the distillery or at the monastery is, to my mind, absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the monks of the monastery of La Grande Chartreuse."

That the liqueur was manufactured according to a secret process or recipe I hold to be proved. Whether the secret imparts any virtue to the liqueur, or whether the business and efforts of Lecouturier's assignees, working in the old locality, have succeeded in producing a liqueur as good or better,

appears to me to be irrelevant, and on that head I think that the Judgment of Lord HERSCHELL in the Yorkshire Relish case (*Birmingham Vinegar Brewing Company v. Powell*, 1897, Appeal Cases, page 710, at page 712) is entirely applicable. Whether, as Lord DAVEY in that case said, the two articles are "a wonderful match" does not seem to me to be in point, except in one particular which is not favorable to the Appellants. For, my Lords, the nearer you can bring in point of appearance, qualities or properties one article or set of goods of your manufacture to others already protected by a trade mark, the clearer is the duty to avoid representing your goods as those others. Nor do I doubt that the use of the word "Chartreuse" by the Appellants would of itself stamp the article which they produced with the reputation which it ought not to possess, viz., that the liqueur was made from the monks' secret recipe.

It is said, however, that these trade marks are the subject of assignment by virtue of the French legislation and Lecouturier's appointment under it. I have already dealt with that from the international point of view, but, my Lords, I desire to add this: in no view of that legislation could it be maintained that it transferred to a liquidator the secrets within the knowledge of the monks who have proceeded to foreign countries, and particularly in Spain, have put into operation these business secrets, and are manufacturing according to them. In short, the business of Chartreuse liqueur as such is carried on by them; and the English trade marks are, therefore, trade marks in respect of a thing the business in which is not and cannot be conducted by the Appellants. The trade marks are in the latter; the business in the monks.

My Lords, such severance is not legally possible. It was not possible before the leading English statute. As Lord Justice FRY remarks in *Pinto* v. *Badman* (8 Patent Cases, page 194): "It has been laid down by the clearest authority that a trade mark can be assigned when it is transferred together with, to use Lord CRANWORTH'S language, 'the manufacture of the goods in which the mark has been used to be affixed.'" And Section 70 of the Patents, &c., Act, 1883, provides that: "A trade mark when registered shall be assigned and transferred only in connection with the goodwill of the business

concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that goodwill." To maintain that there can be goodwill in a business, the secret whereof is not transferred, is, of course, out of the question.

My Lords, it is a significant commentary upon, and justification of, the view taken above with regard to the French legislation and decrees, that it seems to be in complete accord with the decisions come to upon the same topic by French tribunals. The Appellant, Lecouturier, was extremely uncertain as to whether he had any right whatever under the legislation and decrees mentioned to trade marks registered in foreign countries. On 26th December, 1905, he presented an application called "A Petition for Interpretation of Decision" of the Order of the Court of Appeal of Grenoble, of 19th July, 1905. Lecouturier states that the Judgment and Decisions vesting in him the Carthusian property "lack precision, inasmuch as they do not indicate with sufficient clearness that the assets of the liquidation comprise not merely the trade marks registered in France, but likewise the trade marks registered in foreign countries," and he asked the Court "to pronounce and declare by way of interpretation of its decision," that the latter trade marks were included.

The Court declined to grant the petition, narrating, among things, that: "It is not permissible for Judges, under the pretext of interpreting their decision, to make any modification therein or to add a fresh provision to them." The Court "Without taking into consideration the demand made by Lecouturier in his said capacity, declares it to be inadmissible," and condemned him in costs. It is true, my Lords, that that decision left it free to Lecouturier to take such recourse as he might think fit; but in the course of the narrative a most significant commentary is made upon the law of 1st July, 1901, by the learned Judges. It is in these terms: "The liquidator's claim to the ownership of the trade marks registered in foreign countries raises the question of whether the law of 1st July, 1901, which is an exceptional and police law, is operative or not outside the territory of the Republic." It is accordingly clear that when the English Courts are appealed to on the ground that the law of the Republic referred to operated a transfer of foreign trade marks, that is done in face of

a judicial declaration by high French authority that the law sought to be enforced abroad was an exceptional and police law. This has no remote bearing upon the general question and confirms, in my opinion, the conclusion arrived at by your Lordships.

I think it right further to add that what appears to me to have been very near to the question raised in this case has also been settled adversely to the Respondents in the Courts of France. When the monks migrated to Spain and there set up the business according to their secret recipe, "La Union Agricola Sociedad Anonima" was formed for the purpose of conducting the trade, and the liqueurs manufactured in Spain were sold in bottles bearing the words "Les pères Chartreux." On 18th May, 1905, the civil tribunal of Grenoble pronounced judgment in a litigation upon this subject. That judgment narrates as follows:—"Whereas by application of the law of 1st July, the Grande Chartreuse mark may, indeed, have remained in the hands of the liquidator of the dissolved and expelled congregation, but the secrets or processes of manufacture were carried away by the Chartreuse monks as an indissoluble property, seeing that a non-patented process remains unknown, and the mark was thus separated from the product whose origin it had, until then, guaranteed. Whereas this special situation resulting from new legislation brings into presence on the one hand the liquidator who sells under the old Grande Chartreuse mark a product which is not manufactured by the Chartreuse monks, and on the other hand the Chartreuse monks, whose right to manufacture liqueurs according to their process Lecouturier admits, but whom he wishes to prohibit from using their name to characterise and distinguish the products manufactured by them. Whereas the mark is chiefly valuable through the product which it protects and not in itself without the product, although according to our law contrary to the legislation of other countries the product and the mark are not indissolubly bound together."

The finding of that Court was that the Union Agricola is entitled to use in its label the name "Pères Chartreux" in order to designate the manufacturers of the liqueur manufactured at Tarragona, and that they have not committed the misdemeanour of usurpation of name. Nothing, my Lords, could be clearer in the result than that the Tarragona manu-

facture by the monks and according to the secret is, according to French judicial opinion, not interfered with by the law of 1st July, 1901, and that even the products of that manufacture can be sold in France with the name "Les Pères Chartreux." The French Judges note the fact, which is in accordance with English law, that outside of France the business and the marks should go together. It is accordingly, in conclusion, my Lords, satisfactory to observe that the decision of your Lordships' House, far from being out of harmony with the lines of French procedure, whether judicial or legislative, appears to be in entire accord with its provisions and its limitations.

I agree in thinking that the decision of the Court of Appeal ought to be sustained.

The LORD CHANCELLOR: My Lords, I have very few words to add. I agree with the decision of the Court of Appeal. I desire to say that I do not think that any reflection rests upon the French Judicial Officer, Monsieur Henri Lecouturier, who is the Appellant in this case, but this property (for property it is) which has come in question in this Appeal is property situated in England, and must therefore be regulated and disposed of in accordance with the law of England. I am glad to think that in so holding we are not affirming anything inconsistent with the decisions of the French Court, to which we, of course, at all times desire to pay the most becoming respect.

Questions put in the First Appeal:—

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.

Questions put in the Second Appeal:—

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with Costs.

The Contents have it.

[Here follows certification and legalization by the United States Vice and Deputy Consul-General at London, under date of March 24, 1910.]

APPENDIX B.

ROYAL COURTS OF JUSTICE,
Wednesday, 11th December, 1907.

IN THE SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

BEFORE THE LORD CHIEF JUSTICE OF ENGLAND (LORD ALVERSTONE), LORD JUSTICE BUCKLEY, AND LORD JUSTICE KENNEDY.

REY v. LECOUTURIER.

[*From the Shorthand Notes of Cherer, Bennett & Davis, 8, New Court, Carey Street, W. C., and Cock & Knight, Rolls Chambers, 89, Chancery Lane, W. C.*]

JUDGMENT.

THE LORD CHIEF JUSTICE: I regret to say that I am unable to agree in the conclusion at which Mr. JUSTICE JOYCE has arrived, and, inasmuch as the action of the Comptroller in refusing to expunge the last entry is not attempted to be justified on any other grounds than those which Sir Robert Finlay and Mr. Hughes have urged in support of the general decision upon the Judgment, it is unnecessary for me to say more upon it. It seems to me to be a consequence of what I am about to say that the last entry, namely, that which purports to have treated the British trade marks in all those cases as being assigned to Lecouturier, must go off, leaving entirely open what may be done afterwards upon the Register, namely, whether the monks or those who represent their liqueur as being manufactured at Tarragona can be restrained from using the labels. I only have to refer to that incidentally in dealing with the other part of the case. So far as the Judgment is concerned, it will be to expunge that entry and that entry only.

I now come to what is the substantial question in this case, and I think it may be stated in this way: Had the trade

marks, and particularly the word "Chartreuse"—it is best to confine it for the moment to "Chartreuse"—in the year 1901 or 1903, for this purpose it is immaterial, but 1903 will do, acquired in England in the liqueur market a secondary meaning? And if it had acquired a secondary meaning, who was entitled to the benefit of the liqueur protected by that secondary meaning? And then, have the proceedings in France deprived the people who would be entitled to that benefit of the right still to possess it?

I do not know that everyone would state the questions in exactly the same way, but that is how they occur to my mind. After listening most carefully to Sir Robert Finlay's most just and proper criticism of the evidence, I have not the slightest doubt that for a great many years before 1901 the word "Chartreuse" or "Grande Chartreuse" had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included outlying buildings, and whether the final product put in the bottles was actually bottled at the distillery or at the monastery, is, to my mind, absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the monks of the Monastery of La Grande Chartreuse.

Now, really that is scarcely disputed upon the evidence here. I think Mr. Lawrence was entitled to say that there was practically no dispute in the matter. I refer to the only two passages of any importance in the evidence for the Defendants which seem to me to be the best that can be said for them. I refer to pages 90 and 91: "Now prior to 1903, when the monks left Chartreuse, was it well understood in this country that the Chartreuse which was sold was made by the monks?—Yes. Q. Would it, in your opinion, be a matter of importance to anyone now selling Chartreuse to represent that it was being made by the monks?—I do not think so. (Mr. Justice JOYCE): Did you hear the question?—I think I did, my Lord. (Mr. Younger): I will ask it again. Would it, in your opinion, be of importance to anyone selling Chartreuse in this country that he should let it be supposed that it was made by the monks as it always had been?—I do not think so. Q. Had

not their reputation of Chartreuse before 1903 been made exclusively by the reputation it made when sold here?—Yes. Q. And was not it known throughout this country to have been made by the monks?—Yes. Q. Was it not a valuable reputation?—Yes. Q. A very valuable reputation?—Yes. Q. And it was known and sold as Chartreuse, pure and simple, was it not?—It was." I do not think under cross-examination from a hostile witness that there could be any more clear admission that the secondary meaning to which I have referred was recognized in the market. At page 100 there are two questions put to Mr. Willis: they begin at Question 1199: "Have you any experience of the sale of this liqueur in England of Chartreuse?—Yes. Q. You have known of its sale for many years, I suppose?—Yes. Q. And usually asked for as Chartreuse?—Yes. Q. And known to you to have been the manufacture of the monks?—Yes. Q. And in your opinion known generally as the manufacture of the monks?—Yes."

If that had been the very first time that this question had been investigated, if there had been only the evidence in this case, it seems to me that it would abundantly support the view I have taken; but really we ought not to decide this case by assuming that this is the first time that the question has ever been raised. In one sense the evidence before Mr. Justice CHITTY is not before us, but we are entitled to see what was established before Mr. Justice CHITTY in the year 1896, that is five years before or seven years before this question could have arisen. I should like just to call attention to what he says in his Judgment at page 6 of the 13th volume of the Patent Reports: "The evidence as to the liqueur is entirely in favour of the plaintiffs, and is practically uncontradicted. The Plaintiff Doyle is merely the agent in this country for his co-Plaintiff; Grezier is the substantial Plaintiff. He is the Procurator of the Monastery, which was founded in France in the 11th century. The Monks have from a very early period made liqueurs at the Monastery. The materials used in and the processes of making the liqueurs and the elixir, are secrets which at present belong to the Plaintiff Grezier, and are confided to three other members of the Monastery only, who are employed by Grezier and are bound to secrecy." I wish to

say that I do not think this secret can be waved away by a wave of the hand, as it was by Sir Robert Finlay and Mr. Hughes. I think that evidence of gentlemen who came here and swore that up to the time of the dissolution of the Monastery, so particular was it, that only one man was allowed to know one-fourth part of the secret with the exception of the head of the Order, and that of Mr. Baume who came and said he only knew the four parts when they were confided to him when he went to superintend at Tarragona, is not evidence to be disregarded, and it is evidence of the same kind exactly as Mr. Justice CHITTY had before him. "The liqueur, until about the year 1850, was sold only in the towns in the neighbourhood of the Monastery. Since then, the manufacture and sale of the liqueur has been continuously growing, and is now very considerable. Since 1840, or thereabouts, it has been the continuous custom to attach labels to the bottles containing the liqueur made at the Monastery, the colours of the labels being green, yellow or white, according to the colour of the liqueur, and bearing the words or inscription 'Liqueur fabriquée à la Grande Chartreuse' (the words 'Liqueur' and 'Grande' being sometimes abbreviated), or simply 'Grande Chartreuse,' and a facsimile of the signature of L. Garnier. Since 1869, all the liqueurs have been put in bottles of a description then devised, with a bulge in the neck, an example of which is supplied by the exhibits. These bottles formerly had embossed, but now have engraved upon them the words 'Gde. Chartreuse.' Since 1850, the liqueurs of the Monastery, particularly the green and the yellow, have become well known in this country by the names of 'Liqueur de la Grande Chartreuse' and 'Liqueur fabriquée à la Grande Chartreuse,' and by the abbreviated names of 'Chartreuse' and 'Grande Chartreuse,' but more especially as 'Chartreuse.' These names are now of great commercial value."

Now, surely it is not saying too much to say that when we have that state of facts recognized after a full hearing of evidence by the learned Judge, unless the evidence in this case puts the meaning of the words on a different platform, it negatives altogether the suggestion that it merely meant made in the district. Sir Robert Finlay said that he understood Mr. Justice CHITTY to have found there was a district. I

really do not think he did; but even if he did, he did not find there was a district with reference to the passages to which I have been alluding; and whether there is a district or not, he is referring to the marks as being confined to the liqueur made by the Monks, and when he comes to deal with the matter himself, he says that any person ordering Chartreuse intends and expects to be supplied with liqueur made at the Monastery, and if they were to say "Chartreuse" on the label men would at once believe that they were buying the genuine liqueur of the Monastery. I cannot disregard that. If I deal with the passage as to "Chartreuse" or the Monastery as meaning the geographical place at which the stuff was made, then when we come to the Injunction which was read only a few minutes ago, it is quite plain that he was treating Chartreuse and the name Chartreuse as describing the thing which was made by the Monks and nothing else.

Now we come to the history of the trade marks, which is only important to see whether or not it in any way puts any different construction upon these words, because from the year 1876 there have been trade marks on the register, and I call attention to three. In the first place, there is the green label, "Liqueur Fabriquée à la Grande Chartreuse," "Louis Garnier" with the orb and "Louis Garnier" with the orb on the other side. In addition to that, there was what is quite independent of the label, and it has made a very great impression upon me, namely, the bottle, within the glass work of which there is indelibly forever fixed the words "Grande Chartreuse" and the seven stars and the orb, which were also registered trade marks. Now, of course, it is perfectly obvious that the labels may come off, or that they may be pasted over by the label of the particular man who wants to sell his liqueur, but there will always remain that in the bottle which will become or tend to become the name by which it would be known, the existence of the trade mark; and its use is, to my mind, the strongest corroboration of the view taken by Mr. Justice CHITTY, which I think was rightly taken, that the name "Grande Chartreuse" became to be attached, or "Chartreuse," as the name of the liqueur.

Now, Mr. Lawrence told us that the same conclusion had been arrived at by many well-known Chancery Judges. I have not investigated the well-known or not well-known, but I

am entitled to say this, that Sir Robert Finlay and Mr. Hughes, knowing that there are these other decisions, have not called our attention to a single one. It is not suggested that Mr. Justice CHITTY had not arrived at the right conclusion, and, therefore, we have got it that for a great many years this has been litigated in Great Britain—in England—and the rights of the people who possessed this recipe of the manufacture have been recognized, and it had been recognized that to their manufacture in England this name had been exclusively attached. We know also the same thing had taken place in America. We know also from the Judgment that was read that there has been litigation in America by people who had sought to imitate or use the name.

Therefore, if this question is to be decided apart from the effect of the French Judgments, there clearly could not be any question at all about it. Supposing, for the purpose of testing this question, that the monks of La Grande Chartreuse had moved their manufacture to another monastery, in France, or to another building in France not a monastery and had sold the fabric of the distillery, and had left the district of La Grande Chartreuse, and had gone on making the same liqueur in the same way, could it have been contended that a happy individual who was able to buy as old bricks and mortar the distillery at Fourvoirie could immediately call any liqueur he made there "Chartreuse," and have put that upon the English market in that name? Stated in that way, I do not think the case would be arguable.

Now, what is the effect of the French Judgments? I do not go back one bit from what I said to Mr. Hughes, but for the purpose of my Judgment I recognize that the French Courts have decided that the business carried on in France, and some goodwill of that business, passed to the Liquidator, passed to the State. Whether the gentleman was right in thinking that the debts due outside also passed, it is not important to inquire. I will not attempt to express any opinion as to how the French Courts would deal with these questions which arise before us, should they arise before them. It would be impertinent for me to do so, and I do not know how they would deal with them. I am certainly not satisfied that they have decided it, and I am certainly not satisfied that the judicial decision goes further than saying this: that whatever

was there was not Rey's, personally, but was the Monks', and whatever belonged to the Monks in France passed to the Liquidator. I think Mr. Hughes is right in that, at present, but, to my mind, that by no means shows, when the question comes to be litigated, what may be the rights of the people who are trying to sell the genuine liqueur in France. Now, what is the effect of this registration, and what is the effect of the use by the Fermiere Company, the assignees of Lecoutrier, of the word "Chartreuse"? It cannot seriously be disputed, on the face of the evidence in this case, looking at the history of the matter, that by using the word "Chartreuse," still more by using the old labels, they are attempting to get, for their new manufacture, the benefit, in England, of the old trade mark which was attached to the old manufacture, and of the reputation of the old trade labels. I attach no particular importance to the fact that they have put in "Lith. Grenoble," beyond calling attention to the extent to which it was thought desirable to imitate, so to speak, the exactness of the old label. Of course, if this Liqueur fabriquée à la Grande Chartreuse, which, in one sense, was not true speaking of the actual manufacturers, to distinguish it from the distillery and the Monastery, which nobody did—when once you get the fact that this label, known on the market as such was attached to this manufacture, when the article had, in consequence, become to be known as Chartreuse, and when the bottles in which it was contained contain the name "Chartreuse"—then it follows, of course, that that use of those bottles and the use of those labels and the use of the name would have the inevitable effect of giving Cusenier's Liqueur Jaune a position in the market which it would have no right to have, unless Sir Robert Finlay and Mr. Hughes are right in saying that because it is produced within those four walls, or within the particular district, that gives them the right to have that name or that, having purchased or got the benefit of the sale by the Liquidator of the French business, that gives them the right. No answer was given except the answer given by Sir Robert Finlay and Mr. Hughes to my question why they thought fit to put their liqueur into that shaped bottle—"because they had bought the bottle." Buying a bottle in France would have no effect on its use in England. Therefore, I am

driven to the conclusion that why they adopt that shaped bottle in England is because it is only a part of the reputation, and that they thought it absolutely necessary not only to have the shape of the bottle but to have "La Grande Chartreuse" on it and to put the 7 stars which now and for some 40 or 50 years have been used in connection with that. Now one cannot help feeling that if it was only for the purpose of what I have called "genuine competition," the Fermiere Company would not have abandoned the genuine liqueur Jaune name which is better, we understand, than the original Chartreuse, but would have been only too anxious to have kept up the liqueur Jaune name and would have avoided using that which so exactly represents the old manufacture.

Now what is the effect of the registration of their rights which are said by Mr. Hughes—I really do not wish to discuss that question whether it is one right or several—but what is the effect of their being upon the register? The effect of their being upon the register for this trade mark—taking this one particular bottle of the Grande Chartreuse and the stars, is that no one could use that bottle in England, they would be stopped at the Customs unless it was coming over for them. Then there is another fact to which attention has been called more than once. It seems to me that it ought to be quite impossible for the Defendants, the Respondents here, to be able to put out such an advertisement as that which I hold in my hand, which I call the green advertisement, and I desire to point out that the only justification for this advertisement is the presence upon the register of these trade marks in the name of Lecouturier. It cannot be contended that apart from their having got the trade mark rights out of the people who had them before, that they could have published such a label as this. "Chartreuse, the genuine liqueur manufactured solely at La Grande Chartreuse in France. In consequence of events not thoroughly understood by the public an increase of imitations has appeared. Therefore, the necessity arises to put consumers on their guard and remind them that Chartreuse, the incomparable liqueur, is made and can only be made at La Grande Chartreuse"—about as audacious a falsehood as you really could conceive. Then again: "When asking for Chartreuse insist upon seeing the well-known signature and name upon the label." What? Cusenier? Liqueur Jaune?

nothing of the kind, the orb and "Louis Garnier"—"which alone ensures your obtaining the old and world-renowned liqueur, Chartreuse." It seems to me that at least the arm of the law ought to be strong enough to prevent such an advertisement being used in order to push things which are not made in accordance with the old recipe, which do not require, if they are good, such misstatements about them, and it is only possible that that advertisement could be issued as long as there is upon the register the name of Lecouturier, and the Company Fermiere have the benefit of the registration. Even when they use the label, the old label, which by itself would have given the great part of the reputation to them, or some part of it, they added these words: "Shipped to the United Kingdom direct from the Monastery. None is guaranteed genuine in the United Kingdom unless bearing the label of which this notice forms a part." If the words "direct from the Monastery" did not lead people to believe that they were still being made by the Monks I do not understand what they could mean. Now it is said that it will not be possible for the Monks to use the old labels without some additions. That may be so, but we are not dealing with that in this case. As a matter of fact they did add these words: "This liqueur is at the moment, at the present time, being made at Tarragona." Whether that is enough or not we are not considering here; all I am saying is the fact that it may be necessary for the Monks to add something in order to show that the actual manufacture is somewhere else than at Fourvoirie, or rather at La Grande Chartreuse, does not give the Defendant any rights. Then it is said—Sir Robert did not put it, abandoned—but it was suggested that their rights had been affected by their adopting this "Liqueur fabriquée à Tarragone par les Pères Chartreux." In the first place, that was not done until after Lecouturier's name was upon the register; and, secondly, it was required, and only required, because they could not have possibly got any liqueur into England if they had attempted to send it in under the trade mark labels. It seems to me that when this case is understood the view taken by the American Court in the Judgment which I think was singularly concise and well-reasoned is absolutely right, and that the ordinary protection cannot be given to the industry of these gentlemen, the Monks, who

have been obliged to migrate to Spain and other countries unless the English law affords the same protection as apparently they can get in America and, for all I know, also in Germany. Sir Robert Finlay endeavoured to blow down the walls that were surrounding the other side by the Judgment in America, by the Tunis Judgment. It is perfectly obvious that the Tunis Judgment may have proceeded upon different lines, and certainly having heard it read it does not commend itself to my mind as an authority which we ought to follow in preference to the Judgment in the United States. As regards the actual form of the Injunction I would rather leave that to Lord Justice BUCKLEY. It seems to me that in all probability the Injunction ought not to be framed so as to prevent the Company Fermiere from telling the truth, it ought to be framed to prevent them putting a falsehood before the public in order to commend their wares to the British public.

In my opinion this Appeal must be allowed, and I have already said an Injunction granted in the form that Lord Justice BUCKLEY will state, and that the register must be rectified by striking out the alleged assignment of these trade marks to Leconturier.

Lord Justice BUCKLEY: I am of the same opinion. When the facts of this case are appreciated and the point is reached, the case is not to my mind one difficult of decision. I will first say a word upon the French Judgment. The parties who are here before us are all persons amenable to the law of France who were parties to the litigation resulting in those Judgments or deriving title under parties who were before the French Court. We are, I think, bound to take that Judgment as being between the parties before us a binding Judgment. Looking at the first Order, the Order in the Court of First Instance, on the 23rd April, 1904, at page 138 of the first volume of the documents that Judgment affirmed, I think this, that the business of manufacturing liqueurs which was carried on at La Grande Chartreuse, and the goodwill and the ownership of the trade marks, and the exclusive right to the use of the name of Louis Garnier, were the property of the Congregation of the Monks, and were not the property of Rey, with the result that on the law of 1901 taking effect, all that property passed to the Liquidator who was appointed under that system of legislation. That Order was

affirmed on the 19th July, 1905, and further affirmed in the Court of Cassation on the 31st July, 1906. It seems quite plain what the French Court was adjudicating upon was this: it was a dispute whether Rey, a natural person, or the Congregation of the Monks, who were amenable to the law of 1901, was the person entitled to the property, and the Court was affirming that it was not Rey but the Monks who were entitled, with the result, of course, that the law had operation upon that property. The matter is made exceedingly plain that that was the real matter in dispute by looking at what the Court of Cassation did at page 346 of the second volume. That contains this recital: "Whereas as well in the first instance as on appeal the argument has exclusively related to the point whether the property in the business of the Chartreuse with all its accessories should be preserved for the Abbe Rey by virtue of the deed of the 20th November, 1897, or attributed to the Liquidator of the dissolved Congregation" —of course they held that it was the latter. They then go on to say this, which shows what they were not deciding: "At no time have the Judges of Fact been asked to determine the working conditions nor to see whether the working could be carried on without leading third persons into error as to the nature and quality of the product." It seems to me, therefore, that the French Judgment, which I think is binding upon all the parties before us, was subject to this limitation; in the first place that the French Court, of course, was not adjudicating upon subject matters over which it had no jurisdiction, it was adjudicating upon this business as carried on in France, upon the goodwill of this business as enjoyed in France, on the trade marks of this business as enjoyed in France, but of course the jurisdiction of the French Court could not run to determine what ought to be the contents of the English register of trade marks—it could not affect that in any way, nor if there was a goodwill in England as distinguished from a goodwill in France, could the Order in France affect that at all. That is the first limitation of it. The second limitation of the Judgment, I think, is this, that the French Court itself was saying: "What we are confining ourselves to is the decision of the question as between Rey and the Congregation who is entitled to this property, and we are not determining the

working conditions or seeing whether the working can be carried on without leading third persons into error as to the nature or the quality of the products": in other words, the Court of Cassation was by these words expressly leaving open the question which is now before us for decision. With that, I leave the French Judgment.

Now, of course, that is not the end of this matter; to my mind it has very little, if anything, to do with this matter. After that Judgment had been pronounced there passed to the Liquidator under the French law and from him to the other parties a business—this business at La Grande Chartreuse. After that had taken place the Monks who theretofore had carried on that business and from whom it had been taken by operation of law, were, according to our law, entitled to go elsewhere, and were entitled to carry on the identical business from which they had been excluded in France, were entitled to make the article which they had theretofore made, were entitled to say that they were carrying on business and that they were making the article, and offer it for sale, and to enjoy in connection with it such trade marks, if any, as the French Court had not handed over to somebody else. The only thing which they were not entitled to do was they were not entitled to say: We are carrying on the old business which by operation of law has been handed on to the Liquidator. So far for the Plaintiffs. Now, what were the Defendants entitled to do? The Defendants according to our law were entitled to say: We are the successors of the business heretofore carried on by La Grande Chartreuse, we enjoy the goodwill in France of that business, we ask you to buy from us as the persons carrying on that business; but they were not entitled to say if it was not the truth that they were making the article which the Monks had theretofore made, and they were not entitled to pass off their goods as being goods which were made by the Monks. What happened was this: The Monks removed themselves to Tarragona, and there carried on the business of making this liqueur, which, according to what I think upon the evidence, is shown to be a secret process; they were minded to carry on that business, and they got into difficulties in introducing their goods in this country for this reason that Lecouturier, the Liquidator under the French law, had by proceedings which are called into ques-

tion before us, got on the English register, and the Monks, therefore, could not bring their goods in here without doing something or other by way of ceasing to use the trade mark in respect of which Lecouturier had become registered. Under those circumstances they did certain acts which I need not detail, but which did not amount in any sort of way to any kind of abandonment of their rights. Lecouturier had got on the register on the 2nd May, 1905. The Monks, or rather the Plaintiffs, moved on the 20th May, 1905, to set the register right again, and issued their Writ in this present action on the 27th May, 1905. Of course they were asserting throughout those rights which we are asked to determine now, while they did not abandon in any way such rights as they had. They went on with their business, and their complaint in the present proceedings is that the Defendants are, so far as the ordinary action is concerned, passing off the Defendants' goods as if they were the goods of the Plaintiff.

Now, I am perfectly satisfied upon the evidence in this case and the exhibits that that is what the Defendants are doing. Having got upon the English register, they were entitled, I suppose, for the time being, at any rate, to use the English trade marks, and they used them. They added to them a statement: "This is shipped to the United Kingdom direct from the Monastery through Mr. Garrett of London, sole agent for the sale of the products of the Grande Chartreuse in Great Britain and Ireland and South Africa." They issued an advertisement in which, without reading it again, because the Lord Chief Justice has read it, they use these adjectives with regard to the liqueur "genuine," "incomparable," "old and world renowned," and said that by buying from them the purchaser can alone ensure getting that thing. They describe that article as being the genuine article. It seems to me that all that is directed to show or to lead the purchaser to believe that he was buying the article which had been known upon the market during the whole of that time. They also speak of imitations of the article which have appeared, and in connection with that they use the orb and the signature, Louis Garnier, which, of course, had in the minds of the public been throughout connected with the article as made by the Monks. It seems to me that in that the Defendants were representing

that they were making the article which the Monks made, and were not representing which they would have been entitled to do, that they were carrying on the business which they had got under the French law. The Monks when they left and went to Tarragona were entitled to take their secret with them. They took it with them, and they are carrying on from Tarragona a business in liqueurs. Now, of course, it is our law that a trade mark can only be enjoyed in connection with a business. It seems to me that the Monks were enjoying a business, in connection with which they can enjoy, if they are entitled to it, the trade mark and these various labels which have been on the register in respect of which Lecouturier has put his name on the register. They are carrying on a business in connection with which they are entitled to enjoy those trade marks if those trade marks are theirs. Now are they theirs? In my opinion they are. The French Court had no power at all in my view to determine as between Lecouturier and the Monks what was the right of the Monks in respect of the trade mark connected with the Monks' business, and I think they were entitled to keep them. It appears that Lecouturier obtained the insertion upon the register of an assignment which is expressed to bear date 8th December, 1904, when there never was any such assignment at all, upon the footing of an affidavit which referred to certain of the Judgments, but which affidavit, if I am right in my view of the Judgments, did not lead to showing that as regards the English trade marks Lecouturier had become entitled to them at all. It seems to me, therefore, as regards the Motion under the Trade Mark Act that that must succeed; that is to say that the last statement on the register, that on the 8th December, 1904, there was an assignment, must be struck out, leading of course to any subsequent alterations of the register by putting somebody else on that may be entitled. In the action it appears to me that the Plaintiffs are entitled to an enquiry as to damages, and an injunction, which I think should be in this form: An injunction to restrain the Defendants, their servants and agents from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the Plaintiffs as the name of or as descriptive of the liqueur, or without clearly distinguishing the liqueurs so sold from the liqueurs manufactured by the

Plaintiffs and an injunction to restrain the Defendants, their servants, and agents from selling or offering for sale in this country any liqueur or other liquors not so manufactured in such a manner as to represent or lead to the belief that the liqueur or other liquors manufactured or imported or sold by the Defendants are the manufacture of the Plaintiffs, and I think the Plaintiffs are entitled to their costs of this action, and the costs of this Appeal.

The LORD CHIEF JUSTICE : Including what they had to pay to the Comptroller.

Lord Justice BUCKLEY : And the costs of the Trade Mark Motion.

Lord Justice KENNEDY : I am of the same opinion, and, as we are differing from the learned Judge below, I will very shortly state my grounds for concurring entirely with the Judgments which have been already delivered.

There is an action here to restrain the Defendants from doing that which if [is] commonly known as passing off goods which the public would suppose when buying them to be the goods of the other side. There is also a claim under the Trade Marks Act to expunge a certain entry relating to an assignment which appears upon the Register. Now, I am only going to state, without reference to the details of the evidence, the way in which the case presents itself to me. These monks, these Carthusian Monks, did, in fact, have this settlement in the Chartreuse or La Grande Chartreuse district; they manufactured by a process known to them a certain liquid which has become famous as " Chartreuse " ; for many years past, certainly at the time of the Judgment, to which I shall refer, of Mr. Justice CHITTY, in January, 1896, that particular article had a hold upon the market as the manufacture of the Carthusian Monks. Whether the Carthusian Monks were so called originally from an earlier geographical title of the place where they were and where they manufactured, seems to me immaterial. In fact, the product of their industry had acquired a commercial character by the designation of " Chartreuse," and that designation meant to the public an article manufactured by the Monks according to the process which they used, and there it is, it seems to me, with great respect to the learned Judge below, that he has taken a view which upon the evidence appears untenable. In

substance he has attached a value which I do not myself think ought to attach to the mere locality at which the works were carried on, and to the product so manufactured. And as the article had become, whatever might have been the origin either of the name "Chartreuse," or of the manufacture itself—a title describing a liqueur so manufactured by these persons as Mr. Justice CHITTY said in the case of *Grezier & Doyle v. Autran*, the name used in substance is the name of the maker. If that be true then when by the French Judgment M. Lecouturier and his assignees obtained whatever they did obtain under the Statutes and Ordinances of the French Government, all that they got was without that which the present Plaintiffs retained and retain. They got whatever they took there without the power of manufacturing by the persons who had manufactured before, and without the process by which they had manufactured, and it seems to me that according to English law it is clear that there was nothing whatever to prevent the Carthusian Monks carrying their manufacture to another country, carrying the process which they had used and used alone in the manufacture of the known article, and that it is impossible because of anything that happened in France, for the present Defendants to say: "We have acquired that by the artificial transaction," if I may call it so, which in fact they had not got, namely, the process or manufacture of the article. Even if it had been a voluntary cession—a voluntary transfer—these Monks would have been entitled as long as they did not represent that they were acting in the name of their old business, or represent themselves as continuing a business which they had ceded—they would not have been prevented from carrying on business in competition. Here it seems to me that all that took place was what I may call an intra-territorial transaction giving the purchasers through M. Lecouturier certain rights in France, but in no way a transaction affecting that which we have to consider—the rights as regards the protection of the public and the private rights also of the owners so far as the trade marks are concerned in this country. What the Defendants have done is, after the cession which they obtained through the purchase from M. Lecouturier, from the Liquidator, to put upon the English market an article as to which I am not going to repeat the ad-

vertisement which has been already read, but they put an article in a form which was coupled with the description advertised and actually engraved on the bottles—a thing which unmistakeably must lead the buyer, I should think, to suppose that he was still getting that which had become a known article, taking its merit and its reputation from the Monks. I, in that way, again cannot follow the learned Judge below on the evidence before us when at page 141 of the printed Judgment he says: "There was nothing further from the contemplation of either party than that their Chartreuse should be passed off as the product of the other, or be purchased as or for the other." If by that is meant that M. Lecouturier was not seeking to say that what he was selling in this country had been manufactured at Tarragona, no doubt that is perfectly true, but if it means that he did not mean that he was not contemplating, or rather those who represent him were not contemplating that what was going on to the English market should be bought as being the product which had acquired the commercial designation of Chartreuse, that is a thing which was manufactured by Carthusian Monks and manufactured according to their process, I am at variance entirely upon the question of fact. It seems to me plain that what the Defendants desired to impress upon the public was: "You are getting the thing which the Carthusian Monks manufactured by their process," and it would have been perfectly useless to state the fact: "We are not using the process, we are not using that which is manufactured by Carthusian Monks, but we have bought the locality in which the articles were produced before; we have bought the buildings, and so far as we could the plant and the business in France, whatever that may mean, which we must admit does not include the process, and does not include those who manufactured it before and whose hands produced the article." If that be so, it seems to me that we have to deal with a case in which it is shutting one's eyes to the facts not to see that what is being done is a representation that the thing which is being put upon the market is something which it is not, and that there is an injury of which the Plaintiffs have a right to complain, who have continued to make, though in a different place of business in which they manufacture, the article which they manufactured before, and

which is represented by the Defendants untruly to be manufactured by them.

I do not think that more can be said with regard to what took place in France than this which is put in the Judgment of the American Court, and I think put as well as it could be, and that is that the Liquidator and all claiming under him are rivals in business enjoying the advantage of Government protection in the country of his appointment. But that cannot justify him here when the Plaintiffs who have a right to have their trade here protected have proved, as they have done to my satisfaction, that a thing is being sold by him which has never been produced by him, and which he cannot claim the right to say that he has produced merely because he has obtained what—under the act of the Government he has obtained in France as regards the rights of business there.

With regard to the trade mark, it seems to me to follow the other portion of the case in this sense, that all that is being asked here is to expunge that last entry. Whether the other entries there now can stand and can now be used under changed circumstances is another and a different matter. The Plaintiffs have shown upon the face of their labels, and rightly shown, that the manufacture is now being carried on at Tarragona, but all we have to say is that I think we ought to accede to the Plaintiffs' argument on that point, that this last assignment, as it appears in the Register, should be expunged.

As regards the form of the Injunction, my brother Buckley has dealt with that, and it only remains for me to say that I agree entirely with the Judgment.

[Here follows argument on costs, &c., then certification, and legalization by United States Consul-General at London under date of Jan. 13, 1908.]

APPENDIX C.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MARCEL MARIE GREZIER,
Procureur,

vs.

JOHN B. GIRARD.

Upon reading and filing motion for an injunction herein and due proof of service with the affidavits on behalf of the complainant annexed thereto, and upon hearing counsel for the parties and the same having been duly considered by the Court, and it appearing that the complainant is entitled to the exclusive use of the word "Chartreuse" accompanied by a fac-simile of the signature of L. Garnier as a trade-mark for cordial or liqueur in the form and manner described in the bill of complaint herein and shown in the exhibits forming a part thereof; and it further appearing that the respondent has violated and infringed the rights of the complainant in and to the said trade-mark by the sale of bottles of cordial bearing an imitation of said trade-mark as charged in the bill herein.

Now, therefore, it is hereby ordered, adjudged and decreed, that an injunction be issued forthwith, pursuant to the prayer of the bill herein, strictly commanding and enjoining the said respondent said John B. Girard, his clerks, attorneys, agents, servants and employees, under the pains and penalties that may fall upon them, and each of them, in case of disobedience, that they forthwith and until the further order, judgment and decree of this Court, wholly desist and abstain from in anywise, directly or indirectly, selling or causing to be sold any cordial or liqueur, or any compound of

liquor purporting to be cordial or liqueur, in bottles, flasks, or other receptacles, having applied or attached thereto in any form or manner the said trade-mark of the complainant or any reproduction, counterfeit, copy or imitation thereof whatsoever.

N. SHIPMAN,
Judge.

[ENDORSED:] 7-395—Grezier v. Girard.—Filed April 13, 1876.

A Copy:

JOHN A. SHIELDS,
Clerk.

APPENDIX D.

Review of Judgments Rendered in France.

For the information of the Court we give here a brief of the various judgments of French Courts relating to the Carthusians and their properties in France.

1. *Judgment of the Civil Court of First Instance of Grenoble of March 31, 1903.* (Defendant's Exhibit, R., p. 1502). The Procurer of the Republic addressed to the President and Judges composing this Tribunal a petition showing (p. 1503):

> "That the association known under the name of Chartreux, a non-authorized religious congregation whose principal monastery is situated at *St. Pierre de Chartreuse* in the jurisdiction of this Tribunal has been refused the authorization which is solicitated (Session of the Chamber of Deputies of March 26, 1903) that under the terms of Article 18, paragraph 2, of the law of July 1, 1901, it is held dissolved by law since 28th March; * * * in view of the decree of August 16, 1901, passed for the execution of this law: the undersigned requests that it please you to name M. Henri Lecouturier, judicial administrator of the Tribunal of the Seine, rue de Pont

> Neuf 16, sequestrating administrator and liquidator of the property of the Congregation called des Chartreux, not only the properties situated and held at the principal monastery at *St. Pierre de Chartreuse*, but also those held by the said congregation **in France** at its different establishments" (emphasis ours).

The judgment proper recites what has been set forth above, grants the petition, makes provision for publication of the judgment, the expenses of the liquidation to be advanced by the public treasury, and then orders that the judgment be executed.

It will be noted that the petition prayed only for the appointment of a liquidator over the property held by the Congregation *in France*. Subsequently, this same Tribunal, "*by extension of the powers previously conferred upon him*," granted to Lecouturier an Order in Chambers extending his authority so as to embrace foreign trade marks, but this last-named order was *annulled* by the Court of Appeals of Grenoble. The Courts of France have therefore simply given the liquidator authority over the property actually *in France*. Excepting, of course, the one Order in Chambers already referred to, but which was later annulled—the whole series of orders and judgments rendered in France will be searched in vain in an effort to find any contradiction of the above statement.

2. *Order in Chambers of May 17, 1904.* (Defendant's Exhibit, R., p. 1551). The first few pages of this order are a recital which it is not here necessary to consider. On page 1553 it appears that, by writ, Lecouturier, as liquidator, summoned Abbe Rey before a judge in chambers to compel him to turn over to the petitioner, or to his representative, the keys of the factory at Fourvoirie, together with all the books, &c., of the business there carried on.

On pages 1554-5 the order says that it is

> "certain that there is to-day extreme urgency that the mark of la Chartreuse, *on the ownership of which nothing is yet definitely adjudged*, should be protected for the benefit of those legally entitled thereto against imitations." (Italics ours.)

In the next paragraph the order goes on to recite that there was actually pending at that time criminal prosecutions for imitations of the Chartreuse marks, in which Abbe Rey (the putative legal owner of the mark in France) refused to intervene, showing the need of designating a temporary custodian of the mark *in France*, for the sole purpose of conservation of the property. Of course, no such need exists in this Country whose Courts are open to the Monks.

On page 1557 begins the judgment proper, which reads as follows :

> "Therefore, we, * * * * as provisional and urgent measure *without prejudging anything*, authorize Lecouturier in his capacity of Liquidator and administrator of the Congregation of the Chartreux to take actual possession by virtue of article 18 of the Law of the 1st of July, 1901, of the factory at Fourvoirie, and of the business there carried on, with all its dependencies ; we therefore decree that Abbe Rey shall be required to hand over to Lecouturier or his representative the keys of the factory, together with all the books, documents, and papers relating to the business in question, and all the trade-marks belonging thereto, and that the Liquidator may, if required, seize them by calling upon the assistance of the officers of the public force, so as to be able to proceed to all measures of maintenance and administration which he believes to be useful. * * * We declare this judgment subject to immediate execution, notwithstanding appeal."

The substance of this judgment is that it authorizes the Liquidator to take charge of the trade marks for the purpose of *protecting them from such damage as might be suffered for lack of the presence of a legal owner in France to prosecute infringers.* No reference was made to foreign marks, and the purpose of the judgment shows that these were not in view at all.

The judgment, however, is highly important as showing that the reason which moved the French Courts to place the trade-marks temporarily in the hands of an officer of the Court was that otherwise infringements of those marks could not be

prosecuted. Such reason does not exist in this country. An examination of this judgment shows that defendant can find in it no color of authorization for the business which it is attempting to carry on in this country.

The liquidator was appointed and authorized to *prevent* infringements of the trade-marks in France, not to *promote* the infringement of trademarks in the United States and elsewhere.

3. *Judgment of the Civil Court of Grenoble of April 23, 1904.* (Defendant's Exhibit, R., p. 1506.) This suit was brought by Lecouturier, as liquidator and receiver, against Rey, ex-Procureur of the Order of Carthusian Monks. Gervais Garnier intervened, claiming to act as assignee of the rights of Louis Garnier, a former Procureur of the Order. Bonal & Son also intervened. As both of these interventions were dismissed, it is not necessary here to give them any consideration, particularly as they have no bearing on the present case.

After the judgment of March 31, 1903, appointing Lecouturier the liquidator of the property of the Order *in France*, " Rey pretended to be the owner of this business and to support this pretention he invoked a contract of Nov. 20, 1897 " (p. 1513, fol. 2001). Thereupon Lecouturier brought this suit to show that Rey was an interposed person, that the deed of Nov. 20, 1897, was of no legal effect, and that the property was in reality that of the Order.

On page 1512 begins a statement made by Lecouturier to the Court at the beginning of this action, in which is recited what had previously taken place, but in this whole statement not one reference is made to *foreign* marks or to the *foreign* business. Following this statement there are set forth certain facts regarding the interventions, etc, but it is not necessary to consider this matter as it is taken up again in the judgment proper which begins on page 1521.

Passing over some matters which are of no importance here we come, on page 1535, to a bit of interesting history:

> " That before the French Revolution, the monks of the Convent of the Grande-Chartreuse possessed a *manufacturing secret*, which they carried away with them at the time of their expulsion in 1792; that upon their return to France in 1816, and following upon a decision which granted to them the use of the convent

and buildings at Fourvoirie, they resumed the exploitation of their product, manufacturing, first, a green liqueur called "Liqueur of Health," then, towards 1833, a white liqueur called "Melisse," and finally about 1840, the yellow liqueur; that these successive liqueurs resulted from the *methods of fabrication, developed and perfected* by the Brothers and Fathers of the Grande-Chartreuse." (Italics ours.)

Here again it is recognized by the French Tribunal that as far back as 1792 the Monks "*possessed a manufacturing secret.*" We believe that it can be truthfully stated that this recognition of a secret is today of universal prevalence. The existence of such manufacturing secret is moreover, proved by the testimony in this cause.

On page 1541 is given an interesting account of the charitable works of the Order, more than three million Francs being devoted to this purpose.

On pages 1549–50 appears the judgment upon the action: It holds that everything which was the object of the deed of transfer of November 20, 1897, is in reality the property of the Order of Carthusians, the aforesaid deed being null and void as executed to Rey, an interposed person, or "passive trustee"; therefore, that such property forms a part of the assets to be liquidated,—the other "part of the assets" being of course the corporeal property actually seized by the Liquidator. The whole text of this part of the judgment is printed below. Rey appealed, and in consequence there was rendered the:—

4. *Judgment of the Court of Appeals of Grenoble of July 19, 1905,* (Defendant's Exhibit, page 1324, R.).

This judgment quotes the decree of April 23, 1904, last above mentioned, the main portion thereof being as follows (R., pp. 1327–8):

> "Holds that the business of the manufacturing of the liqueurs, elixirs and other products, carried on both at the Grande Chartreuse and at La Fourvoirie, under the commercial name of 'Liqueur fabriquée à la Grande Chartreuse, Elixir vegetal de la Grande Chartreuse, Produits de la Grande Chartreuse,' comprising the

clientele and fixtures, the ownership of the trademarks and commercial names serving to distinguish such products, the models of the bottles, flasks, and boxes and cases serving for the packing of the latter, the exclusive right to the use industrially and commercially of the name 'L. Garnier,' the furniture, the utensils of every kind used in the manufacture, the stock on hand, the primary matters, the manufactured products found within the shops, cellars and warehouses, and generally all other appurtenances or dependencies whatsoever of the said business—the object of the deed of sale of the 20th of November, 1897—are in reality the property of the Congregation of the Chartreuse, the deed itself being null because running to Rey a member of the Congregation whom the liquidator has by weighty presumptions detailed and substantiated established to be a person substituted for the Chartreux ;

" Holds in consequence the said business with all its accessories, therein comprised the trade-marks, to be property held by the congregation within the terms of article 17, paragraph 3 of the law of the 1st of July, 1901, and property to be considered a part of the assets of the liquidator ".

The Judgment concludes by dismissing Rey's appeal and " affirming the judgment of the Civil Court of Grenoble of the 23rd of April, 1904, the same to be executed according to its form and purport " (pp. 1344-5).

This is an affirmance pure and simple of the judgment of the Court below. We call special attention to the first paragraph quoted above and to the fact that not one word is said with respect to the *foreign* trade-marks. The judgment does not mention, and therefore cannot be regarded as deciding whether the marks attributed to Lecouturier were the French marks only, or included also the foreign marks. This was the Liquidator's view of the effect of the first judgment, and consequently after that judgment was rendered he applied to a Judge " in urgency proceedings " (" in Chambers ") and there was granted, upon such *ex parte* application :—

5. *Order in Chambers of February 15, 1905.* This order is not in evidence, but it is quoted in—

6. *Judgment of the Court of Appeals of Grenoble of December 12, 1905* (Complainants' Exhibit 22, R., p. 725), which was rendered on the appeal by Rey from the order below. The order recited (p. 727) :

> " *that by extension of the powers previously conferred upon him* * * * Lecouturier, in his capacity, has powers as administrator-sequestrator * * * to take all steps and to follow out all procedures tending to the transfer and to the registration in his name of the trade marks precedingly registered in foreign lands, notably in England and in the United States of America, in the name of Marcel Marie Grezier and that of Celestin Marius Rey, relating to the manufacture of the cordial called " Chartreuse." (Italics ours.)

By the granting of this order the Judge of the Civil Court recognized and stated that it was an *extension* of the powers previously conferred upon Lecouturier by the same Court in its judgment of April 23, 1904.

The Court of Appeals, however, *reversed* this order, holding (p. 730) :

> " That the application of Lecouturier raised the question as to whether the law of July first, nineteen hundred and one, controlled in foreign countries the properties of the dissolved congregations, and that this question was beyond the competency of the judge in the urgency proceedings ;
>
> * * * * * *
>
> " But whereas, on the second count, the application of the receiver, tending toward the recognition of his right to cause to have transferred and registered in his own name the trademarks registered in foreign lands, especially in England and in the United States of America, put before the Judge in the urgency proceedings the question as to whether the law of July first, nineteen hundred and one, which is a *law of exception*,

controls outside of French territory the properties of the dissolved congregations, or whether its action is limited to the properties located in the territory, and whether the trademarks claimed by Lecouturier and registered in foreign lands are an accessory of the commercial holdings of Fourvoirie, coming under this heading by the liquidation ordered by the decision of March 31, 1903, or whether they constitute a property distinct and independent of this commercial holding.

* * * * * *

"Granting the second count in appeal filed by Rey, reversing, states that the judge of the urgency proceedings was *incompetent;*

"Consequently *annuls* the decision of February fifteenth, nineteen hundred and five;

"Orders withdrawal of the fine;

"Condemns Lecouturier in his capacity to all the costs of the first instance and the appeal." [Italics ours.]

After the decision of Dec. 12, 1905, the Liquidator had in his favor only the decision of the Court of Appeals of Grenoble of July 19, 1905 (No. 4 above). Lecouturier, professing doubt as to the exact meaning of this last-named decision with reference to the foreign marks, then addressed to the Court of Appeals of Grenoble a request to *interpret* its decision of July 19, 1905, and (p. 733, fol. 2865)

> "to state and declare, by way of interpreting its decree of July 19, 1905, that the assets of the liquidation of the Chartreux comprises, not only the trade-marks filed in France by the different representatives of the congregation, but also the trade-marks filed in the different countries of the world, where the formalities have been complied with for this purpose."

On this request for interpretation there was rendered—

7. *Judgment of the Court of Appeals of Grenoble of March 27, 1906* (Complainants' Exhibit 23, R., p. 732).

This judgment first recites the requests by counsel for each party and then quotes (p. 735) the enacting part of the judg-

ment of the Civil Court of April 23, 1904 (which was affirmed by the Court of Appeals on July 19, 1905), and then follows the decree (p. 737).

The following is taken from this decree (p. 739), and it shows *precisely* what the situation is to-day in France, the Court saying that it had "decided in a non-equivocal manner" the former litigation, and that it required no interpretation, and then says (fol. 2890):

> "The claim of the receiver to the property of the trade-marks registered IN THE FOREIGN COUNTRIES, raises the question whether the law of July first, nineteen hundred and one, which is a *law of exception and police*, controls or not, beyond the territory of the Republic, the properties of the dissolved Congregations, and whether the trade-marks registered in foreign lands are an accessory of the commercial holding of Fourvoirie, thus coming under this title into the liquidation, or whether they constitute a distinct and independent property from this commercial holding:
>
> "*The question has not been debated between the parties*, and the court would not have failed, if it had been submitted to it, to treat upon it in the counts of its decision, in order to solve it in its disposition;
>
> "The silence in this respect, exclusive of any debate on this point, does not allow of admitting as being implicitly contained in the decree, in an ambiguous or equivocal form, the decision of which Lecouturier claims the benefit, and *as the interpretation which he solicits from the court would have as effect to extend beyond what was its sole object, the matter judged by the decree of July nineteenth last;*
>
> "Such an application must be rejected as not receivable, and it is left to Lecouturier to have recourse to such means as may be deemed proper;" (our italics).

This Court plainly states that to Lecouturier had been attributed by former judgments the French business at Fourvoirie and the French marks, but *not the foreign marks*, and declares that the question of foreign marks had not even been

before it for decision, that it "has not been debated between the parties" before the Court.

For a more detailed discussion of this and the preceding judgment, see Opinion of Glasson and Weiss, R., p. 774 *et seq.*

8. *Decisions of the Court of Cassation of July 31, 1906* (Defendant's Exhibit No. 21 and No. 22, Record, pp. 1409-12). These decisions were rendered by the Court of last resort in France on appeal by Rey and L. Garnier from the judgment of the Court of Appeals of Grenoble of July 19, 1905, which latter judgment was an affirmance pure and simple of the judgment of the Civil Court of April 23, 1904.

The Court of Cassation simply affirms the judgment appealed from, it "dismisses the appeal and orders the plaintiff to pay costs" (p. 1410).

9. *Decision of the Court of Cassation of Nov. 16, 1908.* This decision was rendered on an appeal taken by Lecouturier from the decision by Court of Appeals of Grenoble under date of March 27, 1906 (No. 7, above). The Court said:

> "WHEREAS, if, in the instance which has terminated in the judgment of the Tribunal of Grenoble of April twenty third, One thousand nine hundred and four, Lecouturier, in claiming the proprietorship of the business exploited by the Chartreux with all its accessories, comprising the trade-marks, asked to be recognized as the proprietor of the marks filed in foreign lands, no part of the motives nor of the purview of the judgment passed on this latter part of his conclusions;
>
> "WHEREAS before the Court, Lecouturier did not renew his original application;
>
> "WHEREAS he limited himself to conclude from the confirmation of the judgment which the Court pronounced July nineteen, One thousand nine hundred and five, and whereas, in its interpretative decree of March twenty seventh, One thousand nine hundred and six, the Court declared that the question of the proprietorship of the marks filed abroad—which question at the same time raised that of the effects which the law of July first, One thousand nine hundred and one, could produce outside of French territory—had not been argued before it;

"WHEREAS this declaration, relative to the interpretation of the decree of One thousand nine hundred and five is sovereign, and whereas, on the other hand, there is no ground for saying that, in deciding as it did, the Court of Grenoble restricted or modified what it had previously decided;

"For these reasons—

"Receives the intervention in due form;

"Joins the said intervention to the appeal, and rendering justice on the whole

"Rejects the appeal, as also the request of intervention, and condemns the appellant to the costs."

This decision was rendered long after the proofs in the present case were closed, therefore it is not in evidence. The above quoted portion is taken from a sworn copy of a translation of a duly certified and legalized (by the U. S. Consul) copy of the decision. The original copy and translation will be produced here in Court, if so desired.

In conclusion, *the highest court in France has held that the question of title to the foreign trade marks has never been before the courts of France.*

Therefore, at the present day, there does not exist in Lecouturier or his assignees any color of right given by any court in France, the Court of Cassation included, to claim or in any manner deal with the marks of the Order of the Carthusian Monks which have been registered in countries foreign to France.

10. *Judgment of the Civil Tribunal of Grenoble of May 18, 1905* (Complainants' Exhibit S, R., p. 701).

This is an action between La Union Agricola, a Spanish corporation, and Lecouturier, receiver (liquidator) of the properties of the Congregation of the Chartreux, and certain merchants.

The decision first recites certain facts showing how the action arose. The recitals are:

(a) The attempted assignment of the business in France to one Rey, former Procureur of the Order.

(b) That the said business and trade marks had already

been adjudged to be "in reality the property of the Congregation of the Chartreux."

(c) That, as a provisional measure of urgency, the receiver, Lecouturier, had been authorized by the Court at Grenoble to take effective possession of the business "without prejudice to his capacity as administrator-sequestrator of the Congregation of the Chartreux" (p. 703).

(d) On removal to Spain, the Monks, acting through Père Baglin, Superior-General of the Order, established the fabrication of their liqueurs, and entered into an agreement with said Spanish corporation, La Union Agricola, to sell said products to said corporation for a period of twelve years. Said corporation sold some of said products under a new label bearing the indication "Liqueur fabriquée à Tarragone par les Pères Chartreux",—the words "PÈRES CHARTREUX" being the essential and prominent ones. (This is the same as "Defendant's Exhibit Complainant's New Label" in the present case, Tr., p. 1297). Certain of these bottles were seized in the hands of Brezun and other merchants, named as defendants, at the suit of said Lecouturier (receiver or liquidator) on the ground that the new label infringed ("counterfeited") the old trademarks whereof said receiver was granted possession *in France* (pp. 704–8).

(e) The Court then states and disposes of certain formal objections raised by the defendants (pp. 708–710); and then comes to the question whether the new label is a counterfeit of the old Grézier labels (pp. 710–711).

The judgment proper begins on p. 711, with the title "As to the Counterfeit and Fraudulent Imitation". The Court decided under this heading (pp. 711–717) that the new label of the Monks was not an imitation or counterfeit of the old. Another important matter here is the finding of fact that the formulæ and processes of fabrication still remain the exclusive and secret possession of the Monks (pp. 711–712):—

> "Whereas in the present suit, Lecouturier, receiver of the properties of the Congregation of the Chartreux, is indeed in possession of the mark of the Grande Chartreuse, but the products which he is having made at Fourvoirie and which he sells to the public under this mark, *are not those which the Chartreux Fathers*

have made according to their process of manufacture and have sold up to the time of their expulsion from the Convent of the Grande Chartreuse ; as by application of the law of July 1st, the mark of the Grande Chartreuse may indeed have remained in the hands of the receiver of the dissolved and expelled Congregation, however *the secrets or processes of manufacture have been carried away by the Chartreux*, as an unseizable property, since processes not patented remain unknown, and the mark was thus separated from the product of which it had up to that time guaranteed the production. (Italics ours.)

" Whereas, this particular situation resulting from the new legislation brings into presence, on the one hand, the receiver who sells under the old mark of the Grande-Chartreuse a product which is not made by the Chartreux, and, on the other hand, the Chartreux in whom Lecouturier recognizes the right to manufacture cordials according to their processes, but to whom he wishes to forbid the use of their name to characterize and distinguish the products manufactured by them."

Counsel for defendant has challenged part of our translation of this Judgment, so, for convenience of the Court, we here print defendant's translation as found on page 1443 of the Record, fol. 1823 :

" Whereas, by application of the law of the 1st of July, the mark of the Grande Chartreuse may have remained in the hands of the Liquidator of the dissolved and expelled Congregation, but the secrets or processes of manufacture have been carried away by the Chartreux as a property unseizable, as long as the non-patented processes remain unknown, and the mark thus found itself separated from the product, the origin of which it had theretofore guaranteed."

As this decision has an important bearing on the rights of the litigation in the United States (especial reference being had here to the " contempt proceedings " brought into this Court by petition for supplemental writ of *certiorari* presented Jan. 3, 1910), this Court's attention is respectfully called to

that portion of the decision found on pp. 718–721 of the Record, under the heading "As to the Usurpation of Name". It is here noted that the words "Chartreux Fathers", wherever they appear in the decision, should be read "Pères Chartreux", the latter being the phrase used in the original.

On page 718 of the Record is a statement by the Court of the principles of the French Law of July 28, 1824, with reference to the "liberty of industry", etc., and then follows:

> "Whereas the trade-mark filed by the Union Agricola indicates Tarragone as the place of manufacture and the Chartreux Fathers [Pères Chartreux] as the manufacturers; as it announces that the cordial is manufactured by the Chartreux Fathers [Pères Chartreux] in the distillery of the Union Agricola, a stock company at Tarragone; as these indications correspond to an existing situation and inform the consumer exactly of the place of manufacture and the name of the manufacturers; as the law of 1824, which punishes only falsehood, cannot govern a trade-mark in which all the statements agree with the truth;
>
> "Whereas Lecouturier in order to take advantage of the law of 1824, contends that the Union Agricola cannot avail itself of the words "Chartreux Fathers" ["Pères Chartreux"], because he alone can make use of them to designate the Chartreux as manufacturers, and that this exclusive right belongs to him, by virtue the law of July 1, 1901, as administrator-sequestrator of the properties of the Congregation of the Chartreux;
>
> "Whereas the words 'Chartreux Fathers' ["Pères Chartreux"] constitute a name which belongs to the Order of the Chartreux, both in its collectivity and to the Monks which form part of that Order so long as they remain attached thereto, faithful to the statutes which are the rule of the Congregation; as the property of this name, as manufacturers, has been recognized in the Chartreux by numerous decisions of justice, which have decided it in their favor, by virtue of article 1 of the law of July 28, 1824; as after their expulsion, if the law of July 1, 1901, which dissolved the Congrega-

tions, dispersed persons and properties, has placed under sequestration the properties held by the Congregation, the Chartreux Fathers [Pères Chartreux] have none the less preserved their name, as much as an order of Monks, a name that they keep in their new residence."

* * * * * * *

"Whereas this principle has been respected, either when a trade-mark has been the object of an expropriation for public purposes, and that the proprietor of the mark has wished, after the expropriation, to continue the commerce and avail himself of his name, or, when a mark has been seized by a creditor from his debtor, and the latter has created another business under his patronymic name (Pouillet, Nos. 91 and 601), or even when the proprietor of a mark composed of his name has sold his business with his mark and has filed a new mark in which he has indicated his patronymic name; as in this last hypothesis of voluntary assignment, very different from the present case, the Court of Cassation has decided that if the acquisition of a business of which a trade-mark formed part gives to the purchaser the right to avail himself of this mark, such as it had been created by the former establishment, this right would not be absolute, and must, when one of the principal elements of the industrial mark is a proper name, be limited by the necessity of preserving to the proprietor of this name that which is inherent thereto by use without abuse (Cassation, April 20, 1896)."

* * * * * *

"But whereas Lecouturier, as administrator-sequestrator of the properties of the congregation and of the business of Abbe Rey, *has no right to the words* 'Chartreux Fathers' ['Pères Chartreux'], as this name has never formed part of the trade-mark of the Grande-Chartreuse; as the products sold to the public have been sold under the name of the Grande-Chartreuse, which was the trade name of the establishment, as was recognized in the judgment of April 23, 1904, which the receiver relies on; as the commercial name was that of

Garnier, as is held in the same judgment which grants to Lecouturier the exclusive right to the industrial and commercial use of the name of L. Garnier; as the Chartreux who were the manufacturers of the products of the Grande-Chartreuse have never distinguished their products by the name of 'Chartreux,' have never given this name to their commercial establishment, neither on the labels, nor on invoices, nor in correspondence, and, [where]as, if the law of July 1, 1901, has had for effect to dispossess them of their business and of its accessories, *it has not been able to take from them their name which was never a dependency of the said business;*

"Whereas the Chartreux who have preserved the right to manufacture cordials by their particular processes of manufacture have also the right to advertise their products to the public or *to distinguish them by their name as manufacturers* 'Chartreux Fathers' ['Pères Chartreux'] *which has remained their property;* as hence Lecouturier is wrong in charging the Union Agricola and the Chartreux with a usurpation of name;" (Italics ours).

Under the title "As to Unfair or Illicit Competition", the Court discusses certain complaints, made by Lecouturier, which are not pertinent for present purposes. The Court held that it had no jurisdiction of this part of the complaint (pp. 721–723).

The decision concludes by holding that the Union Agricola had committed neither counterfeit nor fraudulent imitation, annuls certain seizures, and holds that it has the right to employ on its labels the name "Pères Chartreux", and condemns Lecouturier to pay with interest the sum of eighteen hundred francs as damages to the Union Agricola, and smaller sums to the merchants, and condemns him further to the expenses of all the parties (p. 724). All the questions presented (except that of unfair competition, on which no judgment was given) were decided *adversely* to the liquidator.

11. *Decision of August 14, 1909, by the Tribunal of Commerce of the Seine.* This decision is not in evidence, as it was rendered long after the proofs in the present litigation were

closed. The following quotations are taken from a translation (made by a competent person) of a certified copy, duly legalized by the United States Consul at Paris.

Suit was brought by the Compagnie Fermiere (Lecouturier's assignee) against La Union Agricola in an endeavor to have re-considered the decision by the Tribunal of Grenoble of May 18, 1905, and to have it determined that La Union Agricola could not sell its products while declaring that they were those which had formerly been manufactured as La Grande Chartreuse.

The decision states:

> "Whereas it is proper at first to observe that the judgment of May 18, 1905, *has passed in force as a thing judged;* the Civil Tribunal of Grenoble passing on a suit between Lecouturier, as liquidator and sequestrating-administrator of the goods of the dissolved Congregation of the Chartreux, and the Union Agricola, concerning facts of counterfeiting and unfair competition imputed by Lecouturier in his representative capacity to the Union Agricola, has established their respective rights in connection with the nature and the denomination of the liqueurs that they manufacture and has expressly announced in its motives that— "

Here follows quotations from the judgment of May 18, 1905, and then the decision continues:

> "*Whereas the Fermiere Company of the Grande Chartreuse, that acquired the business by the adjudication in question, is subrogated to Lecouturier in his representative capacity and cannot have more rights than the latter.*
>
> "Whereas the demand of the said Company [Fermiere] tends, under another form, to bring up for reconsideration the decision from which literal citation of the principal motives and dispositions precedes.
>
> "*Whereas this is an adjudicated matter and therefore on this point his application is not receivable.*" (Italics ours.)

The judgment adds that even under this new procedure, the application of the Compagnie Fermiere is not well founded, and continues:

> " Whereas in effect, continues this judgment that from the examination of the book of charges of the adjudication cited above, it results that the Fermiere Company of the Grande Chartreuse has acquired only the name, the marks and the business of the Chartreux, *but not their process of fabrication.*
>
> " *That it does not justify* [*the Fermiere Company*], *even to allege that this secret or process of fabrication is actually in its possession and that the Pères Chartreux have been disseized of it in its favor.*
>
> " Whereas it is of evidence since then that the Pères Chartreux who, as is determined by the judgment of the Civil Tribunal of Grenoble above referred to, *have carried with them their secret or process of fabrication, can fabricate and do fabricate their liqueur at Tarragone with the same formulas and in the same manner that they manufactured it at the Grande Chartreuse.*
>
> " That it cannot be said therefore that they do wrong in announcing to the public that they make the same liqueur as that which they fabricated at the Grande Chartreuse, since one part of the cited judgment recognizes that they can fabricate their liqueur with their processes and under the name of ' *Pères Chartreux* ', and that from another part *the secret or process of fabrication of the said liqueur has not been acquired from them nor taken away and has never been conceded nor divulged by them.*" (Italics ours.)

It has therefore been formally and expressly decided by the judgment of May 18, 1905, as well as by the judgment of Aug. 14, 1909, by the Courts of France, that neither Lecouturier nor the Compagnie Fermiere has any right to or use of the name " Pères Chartreux " and that this name has *remained* the property of the Order and that it never formed a part of the trade marks of the Grande Chartreuse. Attention is called to the fact that the judgment of the Tribunal of Commerce determines anew that the Monks have a secret of fabric-

ation, which secret they have carried away with them, and that the Compagnie Fermiere is not justified even to *allege* to be in possession of this secret; furthermore, that the Monks can and do *now* manufacture their product "with the same formulas and in the same manner" as heretofore;—and the French Courts have declared the right of the Monks to announce these facts in France and thereby make sales of their goods.

Summing up as to the Judgments of the French Courts.

The legal aspects of this case may be briefly presented: The question before the Court is the right to use, in the United States, certain trade-marks, trade-names, distinctive bottles, labels, etc., representing the good-will, etc., *in the United States* of the Chartreuse liqueur business.

In the beginning the rights in question were certainly vested in the complainants; that is, for generations and up to a few years ago, it is agreed by all parties that the Monks exclusively held these rights.

The defendant is now seeking to avail itself of these rights; and, *but for its claim of having acquired the right to use them*, it would be in fault in all respects, and complainants would be entitled to a decree in every respect asked for.

Complainants having originally held the rights in question, in the absence of proof to the contrary, it will be presumed that these rights remain vested in complainants (1 Greenleaf on Evidence, 15th Ed., Sec. 41, p. 62; Sec. 42, p. 65; Chase's Steven's Digest of Evidence, 2nd Am. Ed., p. 261, note 3). That is to say, the burden is on defendant to show that it has lawfully succeeded to the rights of complainants in the United States.

Defendant asserts that these rights have been vested in defendant by virtue of decisions of French tribunals. But for this alleged claim of ownership, defendant would be without the color of a standing in Court.

The pertinent decision of the *French* Courts regarding these United States rights, here in question, is the decision of the Court of Appeals of Grenoble rendered March 27, 1906 (R., p. 732), affirmed by decision

of the Court of Cassation, rendered Nov. 16, 1908, holding that the French Courts have never been called on to decide, and have never decided any controversy as to the rights in the United States or other foreign country.

In other words, the defendant cites the adjudications of the French Courts as its defense against our bill, and the French Courts expressly deny that they have granted the rights which defendant relies on. This leaves defendant without color of right to sell its products as " Chartreuse " and under the labels designed by the Monks, registered by them, and bearing their ecclesiastical symbols and the fac-simile signature of their former Procureur, L. Garnier.

APPENDIX E.

Review of Judgments Rendered in Foreign Countries Other than France.

Buenos Aires Judgment of December 23, 1905 (Complainants' Exhibit 26, p. 803, R.). On the assumption that the French law of July 1, 1901, and the Judgments construed to be rendered in his favor in France, would receive favorable recognition in the Argentine Republic, the Liquidator there brought an action to have transferred to his name, as Liquidator, two trade marks theretofore registered in the Argentine Republic by Father Rey on behalf of the Monks. The Buenos Aires Tribunal held that the French law of July 1, 1901, was inapplicable in the Argentine Republic, and that the judgment Lecouturier sought to have executed was therefore contrary to the principles and to the purposes of that country, " because it aspires to deprive the holder of the rights legitimately acquired in conformity with the laws of the Nation, such as that on trade marks, commerce, and agriculture " (bottom of page 807, R.), and the Court held " that there is no cause for the execution of the judgments presented nor consequently for the transference of the marks ", and condemned Lecouturier to pay the costs.

Judgments were also rendered in favor of the Monks and

against Lecouturier, or his representatives, in two later actions brought in the Argentine Republic, but they are not here in evidence.

Judgment of Federal Courts of Rio de Janeiro of May 9, 1907 (Complainant's Exhibit, R., p. 828). This was an action entitled Rey vs. Lecouturier. It appears that, on behalf of his Order, Rey registered in Brazil certain trade-marks "designed to distinguish the cordials known by the name of 'Chartreuse', the recipes for which belong to the Carthusian Monks". The Liquidator registered some of these same marks in the International Bureau at Berne and subsequently registered them in Rio de Janerio, taking the French law of 1901 as his authority. Thereupon this action was brought for the annulment of the said registration by the Liquidator.

The principal and most interesting paragraph of this judgment is as follows (pp. 831-2):

> "Whereas the French law of July 1, 1901, a law of police and security, *is only established for French territory, for persons and property there situated*, and if it were not so, would clash with the rights of territorial sovereignty, and be against our constitution, which guarantees the right of ownership in all its fullness, and only admits expropriation for public necessity or utility, by previous indemnification (art. 72, paragraph 17), and which has established the regime of full religious freedom, worship and association." (Italics ours.)

The judgment concludes by upholding the right of complainant and annulling the registration by defendant of the marks in Brazil.

Decree of the Swiss Federal Tribunal, Penal Court of Cassation, of Feb. 13, 1906 (Complainants' Exhibit 27, p. 809, R.). This decision was rendered on appeal in a criminal action brought by Rey (the registered proprietor of the Marks in Switzerland, on behalf of the Monks) and his attorney, against certain Swiss merchants, for selling as genuine "Chartreuse" the liqueur manufactured by the French liquidator. The lower court rendered a decision of non-suit, appeal was taken and the Court of Cassation declared the decree of non-suit void and sent the case back. On the second trial the prisoners

were acquitted. Appeal was again taken to the Court of Cassation which resulted in the suspension of the judgment of the lower Court freeing the prisoners, and an injunction issued against the sale or disposal of the infringing goods seized during the first action. The Court of Cassation held, in principle, that the putting in circulation in Switzerland of bottles of "Chartreuse" under marks that constituted an imitation of the mark filed by Rey (on behalf of the Order) is punishable, even though the affixing of the mark to the bottles had been affected in France by the liquidator.

With reference to the rights of the liquidator to property outside of France, the decision states (Record, p. 819).

> "Now the rights to the marks, acquired in foreign lands, could not be included in the state of liquidation in France, even if these rights, prior to the liquidation, had belonged exclusively to the Congregation. The liquidation, begun in France conformably to law, did extend, in view of the purpose of this legal operation and the nature of things, *only to the property of the Congregation* located in France. The dissolution of the Congregation as a corporation, as also the liquidation of its holdings, does not generally affect its commercial capacity, nor the properties of the Congregation; it was only a question of the expatriation of the latter and to cause the disappearance from the French territory of the mainmorts; it was for this purpose and to this end that the liquidation was to serve." (Italics ours.)

The decision continues that execution in Switzerland of the decrees of the French Courts must be refused "for the reason that the laws of public right or the interests of public order in Switzerland are opposed to such a decision of a foreign jurisdiction receiving its execution in this country."

The Court of Geneva by its decision of June 19, 1909, rejected an application made by Lecouturier with a view to rendering executory in Switzerland certain decisions he had obtained in France. The decision states 'that the French law of July 1, 1901, constituted an exceptional measure of police and surety,' and as such 'has been expressly recognized by the French tribunals themselves.' The object of the Swiss law, as

stated, is 'to protect the interest of third parties and of the public, to whom the mark must be a guaranty of the authenticity and of the identity of the product, and who, consequently, have the right to require that the merchandise that is sold them under a mark that they know, remain always the same.' And the Court added that 'though it is certain that if the Fermiere Co. has entered into possession of the premises of the distillery of Fourvoirie, *they have never arrived at making the liqueur which has given the reputation to the marks.*' The Court denied the application for exequator in Switzerland of the French decisions.

On June 26, 1909, the Court of Geneva rendered a second decision in a suit brought against Lecouturier and the Fermiere Company for counterfeiting and also to strike out marks that had been filed by Lecouturier in Switzerland. The Court decided that Lecouturier, not being the assignee of the business of the Monks, in the sense of the Swiss law, had no right to the possession of the Swiss marks. Lecouturier argued the marks bore the words "Liqueur Fabriquée à la Gde. Chartreuse," and that this statement was not true for the reason that the Monks no longer manufactured at the Grande Chartreuse but at Tarragone, Spain; the Court decided that in this case the statement on the marks of the Monks was not a false indication of origin, for the reason that *the label was attached to the personality of the manufacturers*, rather than to the place of manufacture, and that it mattered little whether it was manufactured here or there, provided it was made according to the processes employed by the Monks. The Court decided the ownership of the Swiss marks was vested in Rey (for the benefit of the Order) and directed the striking out of all marks filed by Lecouturier and the Fermiere Company.

Judgment of Civil Tribunal of Hamburg of Fed. 23, 1906 (Defendant's Exhibit 25, R., p. 1459). This is an action entitled between Lecouturier and Rey. The decision was made upon an application by the defendant to reform an interlocutory order of May 4, 1905, prohibiting Rey from disposing of the trade marks registered in the Imperial Patent Office in the name of Rey, but for and on behalf of the Monks, said marks relating to the products of the Grande Chartreuse, on the ground that the marks were in reality the property of the liquidator.

this recipe into Spain, and as they have there continued their exploitation at Tarragone, it is true in other locations and with other utensils, in particular also with other auxiliary means, but in particular also with several old workers who exiled themselves with them, the business, as has been very seasonably set forth in the decision of the Court of Appeals of Hamburg, did not remain in France but was transferred to Spain where Mon. Albert Rey has also transferred his domicile (as appears from the Register of Marks) and who in his capacity of curator is in possession of the marks in question."

Judgment of the Civil Tribunal of Tunis of May 11, 1907 (Defendant's Exhibit, R., p. 1494).

This was an action brought by Rey against Lecouturier for the cancellation of registration by the liquidator of the old Chartreuse trade marks. It appears that Rey died before the trial, and his son Albert Rey continued the prosecution. The judgment asserts that on June 30, 1906, the Compagnie Fermiere de la Grande Chartreuse, as the assignee of the liquidator, acquired the business and marks exploited at the Grande Chartreuse and at Fourvoirie ; in other words, Lecouturier put up the business in his hands as liquidator at public auction and the Compagnie Fermiere, being the highest bidder, acquired the title.

The judgment recites (p. 1500) that whereas the Civil Tribunal of Grenoble had decided that the right of ownership of the marks did not in reality belong to Marius Celestin Rey (the original complainant in this action), it necessarily followed that his son, Albert Rey, had no right to the subject-matter of the action.

The judgment continues (p. 1500) :

" Whereas the decision aforesaid has in France the force of *res judicata*, and the French Courts in Tunisia—country placed under the French protectorate—which exercises jurisdiction there in the name of the sovereignty of the French people, cannot be considered as foreign tribunals in so far as concerns a judgment rendered by a Court sitting in the continental territory of the

> Republic ; that such decision when it became definitive, should therefore be considered as having all the value of *res judicata* for these Courts."

The Court concludes by dismissing the suit on the ground that the plaintiff had no right to bring it, and declares that the Compagnie Fermiere alone has the right to use the trade marks in Tunis.

This judgment was rendered by a Court of First Instance in a country "under the French protectorate," by French Judges named by the French Government and whose tenure of office can be revoked at will by the French Government. Under these circumstances, the Court could not have very well rendered any other judgment.

Appeal was taken by Rey to the Court of Appeals of Algiers. Decision was handed down on Feb. 1, 190[illegible], holding Rey to be without right as the party complainant, but evading to pass on the merits of the question, which was to determine the ownership of the marks in Tunis.

It was this first Tunis judgment whereof the Lord Chief Justice of England said :

> "It is perfectly obvious that the Tunis Judgment may have proceeded on different lines, and certainly having heard it read it does not commend itself to my mind as an authority which we ought to follow in preference to the Judgment [by Judge HOUGH at Circuit] in the United States."

Belgium, Holland, Spain, and Portugal. Decisions favorable to the Monks have also been obtained in these countries ; but as the decisions were not rendered until after the proofs in the present case were closed, they are not in evidence.

Supreme Court of the United

No. 98.

OCTOBER TERM, 1910.

PÈRE ALFREDO LUIS BAGLIN, Superior-General of the Order of Confession Mission, for himself and all of the other Members of said Order,

Petitioners and Cross-Respondents,
(Complainants in Circuit Court),

vs.

THE CUSHENDER COMPANY,

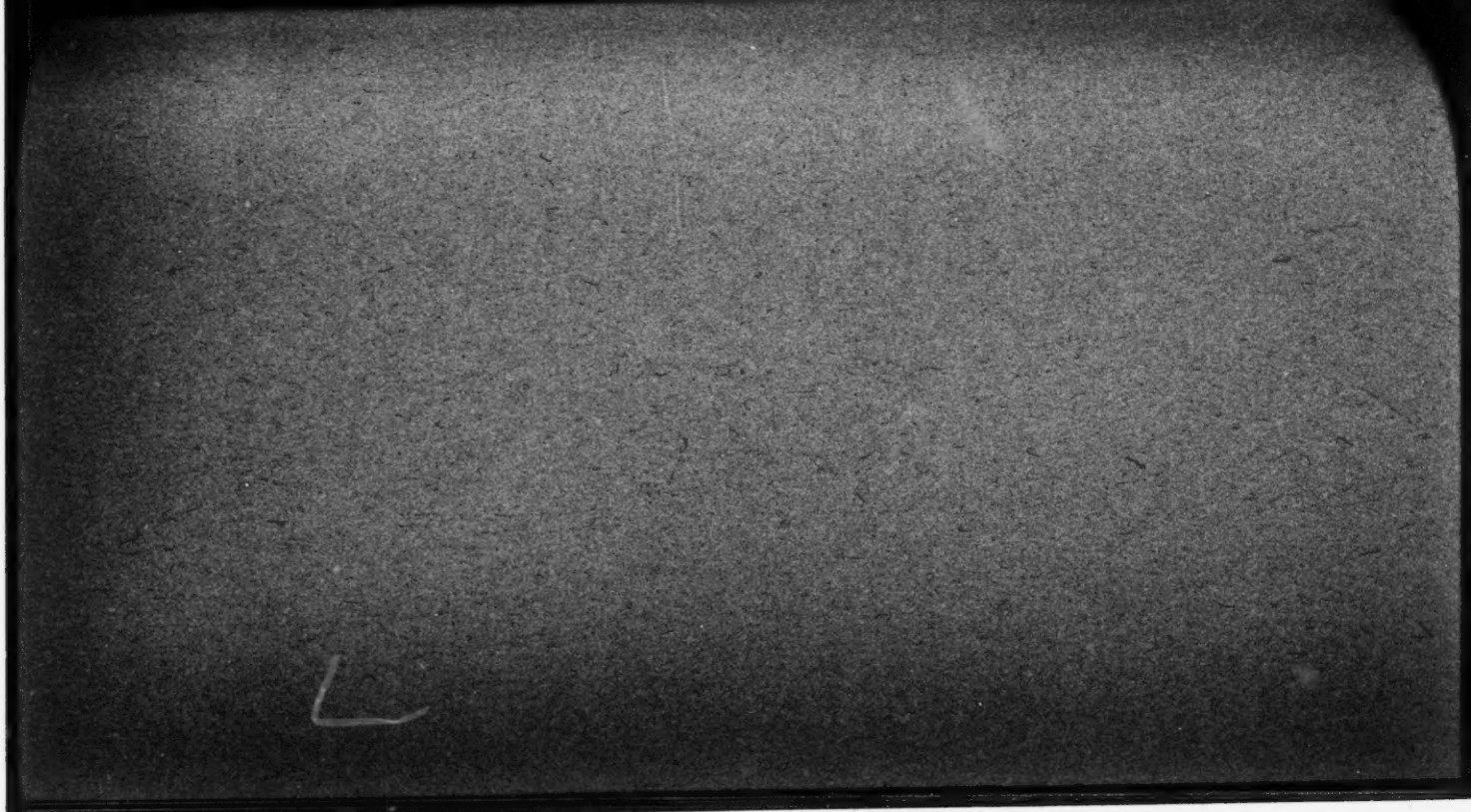
Respondent and Cross-Petitioner,
(Defendant in Circuit Court).

On Writ and Cross-Writ of Certiorari to the United States Circuit Court of Appeals for the Second

REPLY BRIEF FOR PÈRE BAGLIN, &C., ON THE QUESTION OF JURISDICTION.

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Counsel for Petitioners.

C. M. Stadtmueller, Printer & Publisher, Rochester, New York.



Supreme Court of the United States,

NO. 99.—OCTOBER TERM, 1910.

PÈRE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,
Petitioners and Cross-Respondents
(Complainants in Circuit Court),

vs.

THE CUSENIER COMPANY,
Respondent and Cross-Petitioner
(Defendant in Circuit Court).

On Writ and Cross-Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

REPLY BRIEF FOR PÈRE BAGLIN, &c., ON THE QUESTION OF JURISDICTION.

The jurisdiction of this Court (and of the Court of Appeals) is questioned in the brief of respondents. Such question was not raised in the Courts below nor in previous proceedings herein. *Per contra* respondent invoked successively the jurisdiction of the Court of Appeals and of this Court, in its appeal to the former Court and in its cross-petition to this Court.

Respondent's arguments involve two distinct questions: First, as to the *power* or *right* of this Court to grant the writ

of *certiorari;* and, second, as to the *wisdom* or *propriety* of exercising that right in the present case.

McClellan vs. Carland (217 U. S., 268), conclusively answers the first question, holding that this Court *has* ample power to grant the writ. And the action already taken herein by this Court, in granting (as it has done) the writ and cross-writ, is sufficient warrant of the propriety of exercising the right in the present instance; and, under the principle set out at the bottom of page 26 and top of page 27 of respondent's brief, this Court's decision that the writs should be granted, "settles the law in respect thereto for further action in the case." Hence the propriety of issuing said writ in the present case is not now open to discussion.

The objection now raised to the jurisdiction of the Court is without merit. That objection is based on an erroneous assumption, and is supported by unsound reasoning, and by misapplication of decisions of this Court.

I.

The erroneous assumption is stated in large type at head of page 25 of respondent's brief, as follows:

> "Jurisdiction can be based solely in this case upon alleged difference of citizenship."

The Bill of Complaint, however, alleges the ownership by complainants of Trade-marks duly registered in the United States and used by complainants for many years in commerce between the United States and a foreign country (paragraph V., Tr., p. 4); and further alleges infringement of said Trade-marks by defendant by the importation into the United States of certain bottles of an imitation "Chartreuse" (par. VII., p. 5).

The Bill, therefore, states a case arising under the Trade-mark laws of the United States, and hence the Federal Courts have jurisdiction irrespective of adverse citizenship.

But the jurisdiction of the United States Courts can also be maintained on the ground of diverse citizenship, as will be shown hereafter.

II.

Respondent argues (p. 4) that this Court, by granting the petition for writ of *certiorari*, in effect dismissed our appeal. It says: "The effect of the granting of the writ of *certiorari* was by implication to dismiss the appeal." From this unwarranted inference, it draws the conclusion (a *non sequitur*) that, having thus by implication dismissed our appeal, this Court must be presumed to have decided that the present case is not a case arising under the Trade-mark laws.

To this we reply (*a*) The granting of the writ does *not* in effect amount to a dismissal of our appeal. The cases cited on page 4 lend no support whatever to this contention. This Court did not have before it simultaneously our Appeal and our Petition for writ of *certiorari*. Hence the grant of the latter does not imply any action upon the merits of the former. *Per contra*, it was the DEFENDANT who simultaneously presented its cross-petition for *certiorari* and its motion to dismiss our appeal. The Court, by granting the former and taking no action upon the latter, in effect overruled the motion to dismiss, on the principle of the decisions cited by Respondent's Brief (p. 4); and our appeal remains undismissed.

(*b*) There is nothing in the proceedings from which it can be inferred that this Court so much as considered, much less that it passed upon, the question whether or not the Bill states a case arising under the Trade-mark laws of the United States.

This Court sometimes issues its writ of *certiorari* in cases where there is a probable right of appeal, which nevertheless might be open to dispute. That was the express reason why the issuance of that writ was prayed in the present case (*Hurst vs. Hollingsworth*, 94 U. S., 111; *Security Trust Co. vs. Dent*, 187 U. S., 237, 239).

III.

On page 25 respondent says that Section 18 of the Trade-mark Law of 1905, which gives this Court power to issue the writ of *certiorari* in cases arising under that Act cannot be invoked here, because there is no allegation that complainants' trade-marks were registered under that Act. This assumes that the power of the Court to issue such writs is derived solely from that Act. Its power is not derived from, and does not depend upon, *that* Act.

In *A. Leschen & Sons Rope Co. vs. Broderick Co., 201 U. S., 166*, this Court entertained jurisdiction, on appeal, of a suit between citizens of the same State, based on a trade-mark registered under the prior Act of 1881 (as was our "Chartreuse" trade-mark).

The decision in the Leschen Rope Case was rendered March 19, 1906—subsequent to the passage of said Act—and it shows that this Court has jurisdiction of a trade-mark case between citizens of the same State. (Both parties were citizens of the State of Missouri).

Nor is this Court's power to issue such writs affected by the Act of 1905, all existing remedies being expressly reserved by the provisions of the Act itself (Sec. 23, Act of Feb. 20, 1905).

IV.

On page 26 respondent states that "the only provision under which a writ of *certiorari* can be granted is that in Section 6 of the Evarts Act"; and after quoting part of that section it says that therefore this Court had no power to grant the writ "unless the decree of the Circuit Court was final." This is a *non sequitur*, even if the premise were correct.

But the power to issue the writ of *certiorari* is not limited to cases mentioned in the Evarts Act.

McClellan vs. Carland, 217 U. S., 268, 277-279.

Respondent has misunderstood the language of the Act itself. The purpose of the portion quoted by it is plainly to *reserve* and *perpetuate* the right of this Court to issue the writ even in cases in which the Act makes the decisions of the Circuit Courts of Appeal final.

Furthermore one of the very decisions cited by Respondent holds that this Court can grant its writ of *certiorari at any stage of the proceedings.*

American Construction Co. vs. Jacksonville Ry., Co., 148 U. S., 372, 385.

V.

We maintain, however, that the averments and proofs are ample to sustain the jurisdiction of the Court on the ground of diverse citizenship [in addition to the unquestionable jurisdiction on the ground of this being a trade-mark case].

(a) The averment as to defendant is that it is " a New York Corporation, located at and having its principal office and place of business at No. 110 Broad street, in the Borough of Manhattan, City and State of New York " (Tr., p. 1). The words " A New York Corporation " is the usual formula that has generally taken the place of the longer form " a corporation created, organized, and existing under and by virtue of the laws of the State of New York." The meaning of the expression is not uncertain or ambiguous. The cases cited in Respondent's Brief, pages 28, 29, are not applicable. The question therein was as to whether the defendant was a *corporation.* Our Bill alleges that defendant *is* a " corporation " and that it is a *New York* corporation. This averment, not having been denied, stands as proved.

(b) As to complainants, it is conceded that the averments are not so definite as might, in some cases, be desired ; but they are ample for the purpose of showing diverse citizenship upon the authority of the decision of this Court in *United*

States Express Co. vs. Kountze Bros., 8 Wall., 342. There was, in that case, no direct averment that the suit was between citizens of different States. It was averred that defendant (in the Court below) was a corporation existing under the laws of New York, and that plaintiffs were a firm of natural persons, and had been engaged for a period of eighteen months in carrying on the banking business in Omaha. The Court sustained the jurisdiction, saying:

> "In this country, people usually live and have their citizenship in the place where they do business. Especially is this true of persons engaged in a business requiring capital, and involving risk, at a point which is remote from the great centres of trade and commerce" (8 Wall., p. 351).

In the present case there are many more details tending to show that complainants are not citizens of New York State. The Bill alleges that the "Order of Carthusian Monks, of the Convent La Grande Chartreuse, generally known as 'Peres Chartreux' (Chartreuse Fathers) has for about *nine hundred years* prior to 1901," continuously occupied a Convent located in the Republic of France (Par. I., Tr., p. 2); that said Order is a religious Order of Voluntary Association (Par. II.); that in the year 1904, in consequence of the enforcement of the Associations Act by the French Government, the said Order removed the manufacture of Chartreuse liqueurs from said Convent in France, to Tarragona in Spain.

Père Baglin, who was the Superior-General of the Order at the time this suit was begun, testifies to the location of the Order in France for about 800 years (Tr., p. 169, Q. 9), its expulsion from France in 1903 (p. 171, Q. 27), and the re-location of its "Mother House" at Lucca, Italy (p. 169, Q. 12). He testifies that the Carthusians had other houses in England, Switzerland, Germany, Austria and Italy (p. 171, Q. 24). It is evident that, because of the peculiar facts of the case it would be difficult to make the allegations as to the citizenship of each individual (of the class constituting the present complainants) any more definite than we have made them. On the other hand, it is also evident that the averments and

proofs are ample—unchallenged as they are—to establish diverse citizenship from that of a New York Corporation.

Respectfully submitted,

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Counsel for Père Baglin, &c.

Dated New York City, March, 1911.

IN THE 1

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant,

AGAINST

CUSENIER COMPANY, Respondent.

No. 614. October Term, 1908.

2

And now comes the Cusenier Company, the respondent above named, by A. L. Pincoffs and Roger Foster, its counsel, and moves to dismiss, with costs, the appeal taken herein by the above-named Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, upon the ground that this Court has no jurisdiction of the same, and because the said appeal is otherwise informal, irregular and insufficient, for the reason that the decree which the said appeal seeks to bring up for review is not a final decree, and for other reasons apparent upon the face of said papers.

3

4 IN THE

SUPREME COURT OF THE UNITED STATES.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant, AGAINST 5 CUSENIER COMPANY, Respondent.	No. 614. October Term, 1908.

SIR:

Please take notice that upon the affidavit of Jules Aubry, hereto annexed, sworn to on the 27th day of February, 1909, and upon the copy of the bill in equity in the Circuit Court of the United States for the Southern District of New York, in the suit above entitled, and the decree of said Court upon said bill in equity, and upon the order and mandate of the Circuit Court of Appeals for the Second Cir-
6 cuit, upon the appeal from said decree, and the order thereupon of said Circuit Court, copies of which are hereto annexed, and upon all the papers and proceedings herein, and upon the printed brief, a copy of which is herewith served upon you, we shall on Monday, the 29th day of March, 1909, and if motions are not then heard, at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof, to be held in the Capitol, in the City of Washington, District of Columbia, the motion, a copy of which is hereto annexed; and that we shall also then and there move said Court for an

order dismissing the appeal herein for want of jurisdiction, and because the same is otherwise irregular, informal and insufficient, for the reason that the decree which the said appeal seeks to bring up for review is not a final decree, and for other reasons which are apparent upon the face of said papers, and that we shall then and there move for such other and further relief in the premises as may be just. 7

New York, February 27th, 1909.

Yours, &c.,

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Cusenier Company, Respondent.

To PHILIP MAURO, Esq., 8
Of Counsel for Complainant Appellant,
154 Nassau street,
New York.

IN THE

SUPREME COURT OF THE UNITED STATES.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant, AGAINST CUSENIER COMPANY, Respondent.	No. 614. October Term, 1908. (No. 21,410.) 9

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, } ss.:

JULES AUBRY, being duly sworn, deposes and says: I reside in the City, County and State of New York.

10 I am the Vice president of the Cusenier Company, which is the respondent above named.

On or about the 7th day of January, 1905, a bill in equity by the above-named complainant, appellant, against the Cusenier Company, was filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York. A copy of said bill in equity is hereto annexed, marked A. Said bill prays injunctive relief and an accounting as follows: "That said defendant may be com-
" pelled to account for all the profits, gains, savings
" and advantages derived or received by it by reason
" of the unlawful acts herein complained of." An appearance and answer traversing the material
11 allegations thereof were duly filed by the said Cusenier Company to said bill. The general replication was thereafter filed by complainant. Testimony was taken by both parties in support of the issues raised by said answer and replication. On or about the 26th day of November, 1907, a decree was entered thereupon, after a hearing, a copy of which decree is hereunto annexed, marked B. Said decree enjoined the said Cusenier Company from using certain alleged trade-marks, and also from selling or offering for sale any liqueur or cordial not manufactured by complainant, in any dress or package like or simulating in any material respects the dress or package theretofore used by complain-
12 ant. Said decree concluded as follows: "5. It is
" further ADJUDGED, ORDERED and DECREED, that the
" matter be referred to John A. Shields, Esq., as
" Master, to take the usual accounting and report to
" this Court with all convenient speed the amount
" of defendant's profits by reason of the infringe-
" ments and wrongs above referred to, together
" with the quantity of the infringing article now in
" possession or control of defendant or of any of its
" officers, servants or privies. 6. And it is further
" ADJUDGED, ORDERED and DECREED, that complain-
" ants do recover from defendant their taxable costs

"herein; and that execution issue for the same and 13
"for the amounts found due on the accounting."

Subsequently thereto, the said Cusenier Company duly appealed from said decree to the Circuit Court of Appeals of the United States for the Second Circuit. Said appeal duly came on to be heard. Subsequently thereto, and on or about the 21st day of August, 1908, the said Circuit Court of Appeals, after argument on behalf of both parties thereto, duly rendered its decision modifying the injunctive part of said decree and in other respects affirming the same and affirming so much thereof as directed an accounting. The said modification consisted in inserting in said decree after the words "or any of the trade-marks above referred to or any colorable 14
imitation thereof" in the fourth paragraph of the said decree the following words: "unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants," and by striking out from the words in the same paragraph "from making use of any bottle or label or package," the words "bottle or," and by substituting therein for the word "package" the word "symbol," and by inserting in the same paragraph between the words "similar to" and "complainant's exhibit" the words "those appearing on." The order of said Circuit Court of Appeals therein is recited in its mandate. A mandate thereupon was duly issued from said Circuit Court 15
of Appeals on or about the 22d day of August, 1908, a copy of which mandate is hereunto annexed, marked C. A copy of the order upon said mandate, which correctly recites the decision of said Circuit Court of Appeals, is hereunto annexed, marked D. On or about October 16th, 1908, the said complainant obtained from the Honorable E. Henry Lacombe, United States Circuit Judge, an order allowing an appeal from the order for the mandate of the said Circuit Court of Appeals for the Second Circuit, made and entered on October 21st, 1908. Said appeal has been docketed and is

16 now pending on the calendar of this Court and is number 614 on the calendar for the October Term, 1908. Its file number is 4410. A citation thereunder has been served upon the Cusenier Company.

JULES AUBRY.

Sworn to before me this 27th day of February, 1909.

[NOTARIAL SEAL.] Notary Public,
New York County.

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17 **A.**

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said order,

18

vs.

CUSENIER COMPANY.

In Equity.
" Chartreuse."

Bill of Complaint.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Your orator, Pere Alfredo Luis Baglin, of Tarragona, Spain, Procureur of the Order of Carthusian

Monks, Convent La Grande Chartreuse, for himself and all the other members of the said order, brings this his bill of complaint against Cusenier Company, a New York corporation, located at and having its principal office and place of business at No. 110 Broad street, in the Borough of Manhattan, City and State of New York, within the Southern District of New York. 19

And thereupon your orator complains and says:

I.

That said Order of Carthusian Monks, of the Convent La Grande Chartreuse, generally known as "Peres Chartreux" (Carthusian Fathers), has for about nine hundred years prior to 1901, continuously occupied a convent at La Grande, near Voiron, in the Department of Isere, Republic of France, and for upwards of four hundred years last past has continuously carried on the manufacture of a certain liqueur or cordial known throughout the world as "Chartreuse," which said liqueur or cordial has been, and now is, manufactured by them exclusively, in accordance with a certain secret recipe or formula whereof the said order of Carthusian Monks has been and now is the sole proprietor, and which, by reason of its virtues and excellent qualities has become widely and favorably known, and is, and always has been, known and recognized by the distinctive name "Chartreuse," indicative of its manufacture by the said "Peres Chartreux." 20 21

That in consequence of the skill and care exercised by the said "Peres Chartreux" in the manufacture of said cordial or liqueur, and of the merit of said formula, a great demand therefor has been created and still exists throughout the world, which demand your orator and his associates are able and willing to supply.

II.

And your orator further shows that the said Order of Carthusian Monks, known as "Peres Chartreux,"

22 is a religious order or voluntary association, that your orator under the title of "Procureur" is the present business head of the said Order or Association, and has charge of and is responsible for the manufacture and sale of the liqueur aforesaid; and that on account of the great number of Monks, who are the associates of your orator in the Association of said order, it is impossible to join every one of them by name in this suit, wherefore your orator is constrained to bring this suit in his own name on behalf of himself and all of his associates.

III.

23 Further your orator shows that in the year 1904, the said order of Peres Chartreux, in consequence of the enforcement by the French Government of an enactment known as the Associations Act, removed the branch of said convent having charge of the manufacture of said cordial or liqueur to Tarragona, in the Kingdom of Spain, where the manufacture of said cordial or liqueur known as "Chartreuse" is still carried on in accordance with said original secret recipe or formula (which is still the exclusive property of said order) under the immediate supervision of your orator, who, in his capacity of Procureur, has custody thereof.

IV.

24 And your orator further shows upon information and belief that he and his said associates, and their predecessors in said order have, for upwards of three hundred years, made use of the word "Chartreuse" as a trade-mark to designate the said cordial or liqueur manufactured by them; and such trade-mark has been used, throughout the world, exclusively for that purpose; that said cordial or liqueur has been commonly packed in bottles of peculiar design, and packed in cases, both bottles and cases bearing conspicuously the trade-mark "Chartreuse," together with other distinctive marks and

symbols, such as facsimile of the signature of L. 25
Garnier, who was, about sixty years ago, the predecessor of your orator in the office of Procureur of said Order.

V.

That in the year A. D. 1876, the said Order by its then procureur, Frere (that is to say "Brother"), Marcel M. Grezier, caused the said name "Chartreuse" to be registered in the United States Patent Office on behalf of said Order, as evidenced by certificate of registration No. 3,377, dated January 25, 1876, as by reference thereto, or to a duly authenticated copy thereof, here in Court to be produced, will more fully appear; and that in the 26
year 1884 said Order caused a re-registration of said mark by its procureur (Frere Grezier), as evidenced by certificate No. 10,897, dated January 29, 1884, as by reference to said certificate, or a duly authenticated copy thereof, here in Court to be produced, will more fully appear; that said Frere Grezier, on behalf of said Order, fully complied with all the laws of the United States in respect to the registration of trade-marks; that said trade mark had been, prior to the earliest registration aforesaid, and continuously to the present time has been, used in commerce between the United States and a foreign country; and that said Order has at this time the right to the exclusive possession and 27
enjoyment of said trade-marks.

VI.

And your orator avers, upon information and belief, that since the removal of said Order from France, certain persons in said country have, without the consent of said Order, commenced the manufacture of a cordial or liqueur in imitation of that which has for many centuries been manufactured by your orator and his associates as aforesaid, and are marketing the same under the name "Char-

treuse," falsely representing that it is made in accordance with the famous recipe long owned (and still owned exclusively) by your orator, and, for the purpose of injuring your orator and his association and of deceiving the public, have offered the said imitation liqueur to the public in bottles and cases similar in appearance to those long used by your orator and associates as aforesaid, and bearing labels similar to those long used by your orator and associates, and placing thereon the trade-mark "Chartreuse."

VII.

And your orator has been informed and believes that the said defendants and each of them, acting jointly, without the consent of your orator and his associates, but in violation of their rights, have imported from France into the United States, at the port of New York, for sale and use, and have sold and used within the Southern District of New York and elsewhere in the said United States and the territories thereof large quantities of said spurious liqueur or cordial, in cases and bottles closely resembling in appearance, and bearing labels closely resembling those long used by said Order of Peres Chartreux, as aforesaid, the resemblance being so close as readily to deceive the public and bearing the trade-mark "*Chartreuse*"; and that the said defendants have thereby gained and received large profits but to what amount your orator is ignorant, and therefore prays a discovery; and that your orator and his associates have been damaged by the said acts of defendants and their confederates to the amount of one hundred thousand dollars. And your orator is informed and believes, and therefore avers, that these defendants are in like manner about to import and receive in the port of New York for sale and use within the Southern District of New York and elsewhere within the United States and the territories thereof, further quantities

of the said spurious trade-marks, labels and other 31
distinguishing marks of your orator and his associates, and will thereby cause irreparable injury to your orator and his associates unless this Court grants the relief hereinafter prayed.

VIII.

And your orator avers that the subject-matter here in dispute is of great value, exceeding the sum or amount of two thousand dollars ($2,000), exclusive of interest and costs.

IX.

And forasmuch as your orator and his associates 32
can have no relief save in this Honorable Court, your orator prays on behalf of himself and all of his said associates:

(1.) That your Honors will permit him to maintain this suit in his own name on behalf of himself and all of his associates composing the said order of Carthusian Monks (Peres Chartreux).

(2.) That a perpetual injunction, issuing out of and under the seal of this Honorable Court, may issue against this defendant forbidding it, and its associates, attorneys, successors, assigns, agents, clerks, servants and workmen from

(*a.*) infringing the said trade-marks or either of 33
them;

(*b.*) imitating the said labels or other distinctive markings and features of the genuine "Chartreuse" of your orator and his associates;

(*c.*) making use of the name "CHARTREUSE" or any imitation thereof in connection with liqueurs or cordials;

(*d.*) or in anywise representing that any liqueur or cordial or similar liquor not manufac-

34 tured by your orator and his associates or their successors in the said order of Carthusian Monks is the genuine Chartreuse, or is made in accordance with the secret process of the Carthusian Monks, or in any manner trading upon the reputation and good-will of your orator and his associates and their predecessors and successors in said Association.

(3.) That your Honors will grant a preliminary injunction, to the same purport, tenor and effect, as herein prayed for in regard to the perpetual injunction.

35 (4.) That this defendant may be compelled to account for all the profits, gains, savings and advantages derived or received by it, by reason of the unlawful acts herein complained of; and that this Court may assess or cause to be assessed the amount of damages sustained in the premises by your orator and his associates; and that this defendant may be compelled to pay to your orator as the representative of himself and all his associates in the said order of Carthusian Monks, the profits and damages so ascertained;

(5.) That your Honors will grant unto your orator
36 the costs of this proceeding and such other and further relief as the equity of the case may require.

To this end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may full, true and direct answer make—but not under oath, answer under oath being expressly waived—according to the best and utmost of the knowledge, information, remembrance and belief of the defendant and of its officers and agents to all the allegations of this bill of complaint as fully and particularly as if the same were repeated, para-

graph by paragraph, and the said defendant and its officers and agents thereto severally and specifically interrogated, may it please your Honors to grant to your orator a writ of *subpœna ad respondendum* issuing out of and under the seal of this Honorable Court, directed to said defendant Cusenier Company, and commanding it to appear and make answer to this bill of complaint, and to perform and abide by such orders and decrees as to this Court may seem just. 37

And your orator will ever pray.

(Signed) ALFREDO LUIS BAGLIN,
Procureur of the Association of Carthusian Monks, on his own behalf and as representing all his associates in said Order. 38

(Signed) By HENRY BATJER,
His Attorney in Fact.

(Signed) PHILIP MAURO,
C. L. MASSIE,
Of Counsel.

(Signed) ELISHA K. CAMP,
Solicitor for Complainant.

Office and P. O. address,
277 Broadway,
Borough of Manhattan,
City of New York.

39

STATE OF NEW YORK, }
County of New York, } ss.:

HENRY BATJER, being duly sworn, deposes and says: I am a member of the firm of Batjer & Company, of 45 Broadway, New York City, which firm has been for about ten years last past the exclusive agents, for the United States of America, of the Order of Carthusian Monks, complainants herein, for the sale of the cordial or liqueur known as "Chartreuse," and am attorney in fact for the complainant, duly authorized to begin this action in his

name, as representing himself and all his associates in said Order; I have read the foregoing bill and know the contents thereof, and I believe the same to be true. My information is gained from correspondence with European agents of said Order, and from correspondence and conversations with local representatives of the same, and from general reading.

(Signed) HENRY BATJER.

Subscribed and sworn to before me this third day of January, 1905.

(Signed) OTTO M. BIERLING,
[SEAL.] Notary Public.

B. 43

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, held in the Court Rooms thereof, in the Federal Building, in the Borough of Manhattan and City of New York, on the 26th day of November, 1907.

Present: HON. CHARLES M. HOUGH,
United States Judge.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainants, 44

vs.

CUSENIER COMPANY, Defendant.

In Equity.

No. 8949.

Decree.

This cause coming on to be heard on Nov. 11, 1907, upon Bill, Answer and Replication, and full Proofs of the respective parties (comprising the Testimony of numerous witnesses who were subjected to cross-examination, as well as Exhibits), and Philip Mauro, Esq., for Complainants, and Charles Howson, Esq., for Defendant, having been heard both orally and by printed briefs, and the Court being fully advised in the premises; now, therefore, upon consideration thereof and on motion of Complainants' Solicitor, it is this day: 45

1. ADJUDGED, ORDERED and DECREED that the word-symbol "CHARTREUSE," as applied to liqueur

46 or cordial, is a good and valid trade-mark, and in this country has been and now is the sole and exclusive property of the Carthusian Monks or Fathers ("PERES CHARTREUX") complainants herein; and that the said word-symbol "Chartreuse" accompanied by the fac-simile signature of L. Garnier, as set forth in U. S. Trade-Mark Certificate No. 3,377, registered in the U. S. Patent Office Jan. 25, 1876 (re-registered Jan. 29, 1884, as No. 10,897), and in U. S. Certificate No. 3,989, registered Sept. 12, 1876 (re-registered Jan. 29, 1884, as No. 10,898), and as appearing upon "Complainant's Exhibit, Bottle of Chartreuse sold by Batjer & Co.," constitute good and valid trade-marks, and in this country have been and now are
47 the sole and exclusive property of said complainants the Carthusian Monks and Fathers ("PERES CHARTREUX"); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants.

2. It is further ADJUDGED, ORDERED and DECREED that the defendant herein the Cusenier Company has infringed the said trade-marks and each of them, and has violated complainants' rights in the premises, by importing and causing to be imported, selling and causing to be sold, and offering for sale and causing to be offered for sale, in the United
48 States, liqueur or cordial not manufactured by the complainants herein, but purporting to be "Chartreuse" and put up in packages having affixed thereto the trade-marks above referred to.

3. It is further ADJUDGED, ORDERED and DECREED that defendant herein the Cusenier Company has been guilty of unfair competition with complainants by importing and causing to be imported, by selling and causing to be sold, and by offering for sale and causing to be offered for sale, in the United States, liqueur or cordial not manufactured by complainants, but put up in bottles, dress, etc., resembling

in all substantial respects the bottles, dress, etc., 49
hitherto employed by complainants in marketing their genuine Chartreuse; and particularly by selling or offering for sale the bottle of liqueur now on file in this Court as "Complainants' Exhibit, Defendant's Liqueur."

4. It is further ADJUDGED, ORDERED, and DECREED that defendant, its associates, successors, assigns, officers, servants, clerks, agents, and workmen, and each of them be, and they hereby are, *perpetually enjoined* from using in this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the Trade-Mark "Chartreuse" or of any colorable imitation 50
thereof, or the fac-simile signature of L. Garnier, or any colorable imitation thereof, or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants, and in particular from making use of any bottle or label or package like or substantially similar to "Complainants' Exhibit, Defendant's Liqueur," being the bottle now on file as an exhibit in this 51
Court, and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

5. It is further ADJUDGED, ORDERED, and DECREED that the matter be referred to John A. Shields, Esq., as Master, to take the usual accounting and report to this Court with all convenient speed the amount of defendant's profits by reason of the infringements and wrongs above referred to, together with the quantity of the infringing article now in possession

52 or control of defendant or of any of its officers, servants, or privies.

6. And it is further ADJUDGED, ORDERED, and DECREED that complainants do recover from defendant their taxable costs herein; and that execution issue for the same and for the amounts found due on the accounting.

(Signed) C. M. HOUGH,
U. S. J.

(Endorsed: In the Circuit Court of the United States for the Southern District of New York.—Pere Alfredo Luis Baglin, &c. *vs.* Cusenier Company.—In Equity, Docket No. 8949.—DECREE.—
53 Philip Mauro, C. A. L. Massie, Ralph L. Scott, of Counsel for Complainants, Tribune Bldg., New York City.—U. S. Circuit Court, Southern District of New York.—Filed Nov. 26, 1907.—John A. Shields, Clerk.)

C.

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, GREETING:

54

WHEREAS, lately in the Circuit Court of the United States for the Southern District of New York, before you, or some of you, in a cause between Pere Alfredo Luis Baglin and the Cusenier Company a decree was entered in the office of the Clerk of said Court on the 26th day of November, 1907, in the words and figures following, to wit:

"This cause coming on to be heard on Nov. 11, 1907, upon bill, answer and replication and full proofs of the respective parties (comprising the testimony of numerous witnesses who were subjected to cross-examination, as well as exhibits) and Philip Mauro

Esq., for complainant, and Charles Howson, Esq., for defendants, having been heard both orally and by printed briefs, and the Court being fully advised in the premises, now, therefore, upon consideration thereof and on motion of complainants' solicitor it is this day 55

1. Adjudged, ordered and decreed that the word symbol 'Chartreuse' as applied to liqueur or cordial is a good and valid trade mark and in this country has been and is now the sole and exclusive property of the Carthusian Monks or Fathers ('Peres Chartreux') complainants herein and that the said word symbol 'Chartreuse' accompanied by the fac-simile signature of L. Garnier as set forth in U. S. Trade Mark Certificate No. 3377, registered in the U. S. Patent Office January 25, 1876 (re-registered January 29, 1884, as No. 10,897) and in U. S. Certificate No. 3989, registered September 12, 1876 (re-registered January 29, 1884 as No. 10,898), and as appearing upon 'Complainants' Exhibit Bottle of Chartreuse sold by Batjer & Co.,' constitute good and valid trade marks and in this country have been and now are the sole and exclusive property of said complainants the Carthusian Monks or Fathers ('Peres Chartreux'); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks or any of them upon liqueurs or cordials manufactured by the complainants. 56

2. It is further adjudged, ordered and decreed that the defendant herein, the Cusenier Company, has infringed the said trade marks and each of them and has violated complainants' rights on the premises by importing and causing to be imported, selling and causing to be sold and offering for sale and causing to be offered for sale in the United States liqueur or cordial not manufactured by the complainants herein but purporting to be 'Chartreuse' and put up in packages having affixed thereto the trade marks above referred to. 57

3. It is further adjudged, ordered and decreed that defendant herein, the Cusenier Company, has been guilty of unfair competition with complainants by importing and causing to be imported, by selling and causing to be sold, and by offering for sale and causing to be offered for sale in the United States liqueur or cordial not manufactured by complainants but put up in bottles, dress, etc., resem-

58 bling in all substantial respects the bottles, dress, etc., hitherto employed by complainants in marketing their genuine Chartreuse; and particularly by selling or offering for sale the bottle of liqueur now on file in this Court as 'Complainants' Exhibit Defendants Liqueur.'

4. It is further adjudged, ordered and decreed that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen and each of them be and they hereby are perpetually enjoined from using in this country or in any possession thereof, in connection with any liquor or cordial not manufactured by complainants, the trade mark "Chartreuse" or of any colorable imitation thereof—or the fac-simile signature of L. Garnier or any colorable imitation thereof—or any of the trade marks above referred to or any colorable imi-
59 tation thereof; and they and each of them are likewise perpetually enjoined from importing or putting out or selling or offering for sale, directly or indirectly within this country, any liqueur or cordial not manufactured by complainants in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any bottle or label or package like or substantially similar to "Complainants' Exhibit Defendant's Liqueur," being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

5. It is further adjudged, ordered and decreed that
60 the matter be referred to John A. Shields, Esq., as Master to take the usual accounting and report to this Court with all convenient speed the amount of defendant's profits by reason of the infringements and wrongs above referred to, together with the quantity of the infringing article now in possession or control of defendant or any of its officers, servants or privies.

6. And it is further adjudged, ordered and decreed that complainants do recover from defendant their taxable costs herein; and that execution issue for the same and for the amounts found due on the accounting.

C. M. Hough,
U. S. J."

as by the inspection of the transcript of record of 61
the said Court, which was brought into the United States Circuit Court of Appeals for the Second Circuit, by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and seven, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, 62

That the decree of said Circuit Court be and it hereby is amended in accordance with the opinion of this Court, and as so amended is affirmed, without costs to either party in this Court.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the decision of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 22nd day of August, in the year of our Lord one thousand nine hundred and eight. 63

(Signed) WM. PARKIN,
[SEAL.] Clerk of the United States Circuit Court of Appeals for the Second Circuit.

64 **D.**

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Court Room thereof, in the Federal Building, in the Borough of Manhattan and City of New York, and State of New York, on the 1st day of November, 1908.

Present--Hon. E. HENRY LACOMBE,
United States Circuit Judge.

65 PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of the said Order, Complainants,

vs.

THE CUSENIER COMPANY, Defendant.

In Equity, No. 8949. "Chartreuse."

Order.

66 On reading the mandate herein of the Circuit Court of Appeals for the Second Circuit, dated August 22, 1904, and filed in this Court on November 18, 1908; now, after hearing Messrs. A. L. Pincoffs and Roger Foster, of counsel for defendant, and Messrs. C. A. L. Massie and Ralph L. Scott, of counsel for complainants, it is this day

ORDERED, ADJUDGED AND DECREED, that said mandate be entered, and that the said mandate be and it hereby is made the order, judgment and decree of this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the type- 67
written paper entitled "Decree," dated and entered herein on November 26, 1907 (being the original decree herein), be and the same hereby is modified as follows:

On page 3 thereof, in the paragraph numbered "4," in line 8 of said paragraph, after the word "thereof," insert the following:

"unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants";

in line 18, of said paragraph 4, strike out the words "bottle or," and in the same line substitute the word "symbol" for the word "package," and after the words "similar to," being 68
the last word of the same line and the first word of the next line (line 19), insert the words "those appearing on."

So that the said paragraph numbered 4 shall read:

"4. It is further ADJUDGED, ORDERED and DECREED, that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen, and each of them be, and they hereby are, *perpetually enjoined* from using in this country or in any possession thereof, in connection with any liqueur or cordial not 69
manufactured by complainants, the trademark "Chartreuse" or of any colorable imitation thereof unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants, or the fac-simile signature of of L. Garnier, or any colorable imitation thereof, or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or

indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants, and in particular from making use of any label or symbol like or substantially similar to those appearing on 'Complainants' Exhibit Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court; and from in anywise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

And it is further ORDERED, ADJUDGED, and DECREED that the aforesaid decree of this Court, filed and entered herein November 26, 1907, as above modified, be and the same hereby is made the order, judgment and decree of this Court; and it is further

ORDERED, ADJUDGED and DECREED that a writ of perpetual injunction herein, in conformity with the decree as above modified, be issued out of and under the seal of this Court, and that the issuing of said new writ of injunction shall operate to vacate the one originally issued.

(Sgd.) E. HENRY LACOMBE,
United States Circuit Judge.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order,
Complainants, Appellants,

AGAINST

THE CUSENIER COMPANY,
Defendant, Respondent.

No. 614.
October Term,
1908.

BRIEF IN REBUTTAL FOR DEFENDANT, RESPONDENT UPON MOTION TO DISMISS APPEAL.

I.

The ingenious argument of the learned counsel for the complainants-appellants, is based upon the proposition that the determination of a master, as to what profits have been made by the manufacture and sale of goods, does not involve the exercise of judicial functions and is merely ministerial.

The decision thereof involves the consideration of questions as to the admissibility of evidence upon the subject, which may be taken from other sources, as well as from the books of defendant-respondent, and the decision of disputed questions of fact and law. No more difficult questions can be found in

the books than those concerning an accounting of profits from the use of patents and from trademarks.

The point that a distinction exists between an accounting for damages and one merely for profits is set at rest by the case of *Hanniser* v. *Stainthorpe*, 2 Wall. 106.

That was a patent case, where an injunction was decreed with an account of "gains and profit." It was held that such a decree was interlocutory and not final.

This case is cited in the opinion in *ex parte National Enameling Co.*, 201 U. S. 156, 160, in which the learned counsel for appellants appeared, in support of the proposition that the decree therein, which he then contended was final, was in reality only an interlocutory decree.

The learned counsel for the appellants is mistaken in stating that the decree in the case at bar was not self-executing (see p. 4 of his brief), and that no further judicial action was contemplated. On the contrary, it is expressly ordered (Motion Papers, p. 17) that the matter be referred to John A. Shields, as Master, "to take the *usual accounting* and *report to this Court* with all convenient speed, the amount of defendant's profits."

It is clear, therefore, that when it was afterwards stated that execution issue for the amount found due on the accounting, this meant that such amount as shall be found due after the Master's report shall be confirmed by the Court in the usual manner.

II.

We insist that the interlocutory decree is not appealable.

If, however, this Court is of the opinion that the filing *nunc pro tunc* of a remittitur releasing the

claim for profits, when made by our consent, will validate the appeal; we readily consent to such a course. It is the desire of the defendant respondent to interpose no obstacle to the decision of the important questions involved in this case by the highest tribunal in the land, in the manner that is quickest and that will necessitate the least expense. If, on the other hand, the Court thinks that the filing of such a remittitur will require a new appeal, we consent to the return of the transcript to the Court below, and to its use upon any subsequent appeal and to anything that may be deemed necessary by this Court, in order to bring the whole matter before it, expeditiously and economically, provided that none of our rights are waived. We reserve, however, all our rights to object to each and all of the proceedings in the Courts below.

Respectfully submitted,

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Defendant-Respondent.

Office Supreme Court, U. S.
FILED.
APR 1 1909
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

99.

No. [redacted] OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, SUPERIOR-GENERAL OF THE ORDER OF CARTHUSIAN MONKS, FOR HIMSELF AND ALL OTHER MEMBERS OF SAID ORDER,

Complainant Appellant,

against

CUSENIER COMPANY,

Respondent.

(21,410.)

Brief in Support of Motion to Dismiss Appeal.

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Respondent.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

IN THE

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all other members of said order,
Complainant Appellant,

AGAINST

CUSENIER COMPANY,
Respondent.

(21,410.)

No. 614.
October Term,
1908.

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL.

Statement.

This is an appeal from an order of the Circuit Court of Appeals for the Second Circuit, which modified and in other respects affirmed a decree for an injunction and accounting, in a suit to enjoin the infringement of an alleged trade-mark.

The decree of the Circuit Court (164 Fed. 25) from which the appeal was taken to the Circuit Court of Appeals enjoined the alleged infringement of said alleged trade-mark, and also provided for an accounting of the profits. No accounting has been had. The modification contained in the order and

mandate of the Circuit Court of Appeals related purely to the injunctive relief granted in the decree and left the direction for an accounting in full force and effect.

The bill in equity prayed an accounting as well as an injunction.

The motion to dismiss is made for the reason that this is not a final decree.

I.

This Court has no jurisdiction to review the decision of a Circuit Court of Appeals, which affirms, reverses or modifies an appeal from an interlocutory decree for an injunction.

Kirwan v. *Murphy*, 170 U. S. 205.

II.

The decree of the Circuit Court was not final, but was merely interlocutory.

It provided not only for an injunction, but also for an accounting.

There could be no final decree in the case until the accounting is terminated (*Brown* v. *Swann*, 9 Peters, 1; *Barnard* v. *Gibson*, 7 Howard, 650; *Beebe* v. *Russell*, 19 Howard, 283; *Keystone Manganese & Iron Co.* v. *Martin*, 132 U. S. 91; *McGourkey* v. *Toledo & Ohio Central Ry. Co.*, 146 U. S. 536; *California Nat. Bank* v. *Stateler*, 171 U. S. 447; *Union Mutual Life Ins. Co.* v. *Kirchoff*, 160 U. S. 374; *Hollander* v. *Fecheimer*, 162 U. S. 326). Until that time the Circuit Court may at any time, modify the in-

junction upon motion without any bill of review several years after the decree was entered (*Barnard* v. *Gibson*, 7 Howard, 650, 657, quoted *infra; Comly* v. *Buchanan*, 81 Fed. 58).

That a decree which directs an accounting is not a final decree, was the rule of the English Court of Chancery, *Daniell's Ch. Pr.*, 1st Am. Ed., 1193, and has been followed by this Court since the time of Chief Justice Marshall.

In *Brown* v. *Swann*, 9 Peters, 1, 2, 3, the service below was thus:

"It is thereupon by the Court adjudged and de-
" creed, that the injunction heretofore awarded the
" complainant be perpetual except as to the said
" sum of nine hundred and forty-nine dollars and
" seventy cents, of which sum the defendant is at
" liberty to proceed under her judgment for the sum
" of eight hundred and ninety dollars and seventy
" cents; and on the complainant's motion, for reasons
" appearing to the Court, this cause is continued for
" further consideration as to the said sum of fifty
" dollars, part of the credit claimed by the com-
" plainant."

" Mr. Chief Justice Marshall delivered the opinion
" of the Court, dismissing the appeal, with costs,
" because the appeal was granted before there was a
" final decree in the case.

" On appeal from the Circuit Court of the United
" States for the District of Columbia, holden in
" and for the County of Alexandria, on considera-
" tion of the motion made in this cause yesterday,
" by Mr. Edmund J. Lee, of counsel for the appel-
" lees, to dismiss this cause, because the appeal was
" granted before there was a final decree rendered
" in the Courts below, and of the arguments of
" counsel thereupon, had as well for the appellant
" as for the appellees, it is now here ordered, ad-
" judged and decreed by this Court that this ap-
" peal be, and the same is hereby, dismissed, with
" costs."

In *Barnard* v. *Gibson*, 7 Howard, 650, 656, 657, 658, this Court said, speaking through Mr. Justice M'Lean: "The cause was submitted to the "circuit judge, who decreed that the defendants "below be perpetually enjoined from any further "constructing or using in any manner the two "planing-machines, &c., and the case was referred "to a master to ascertain and report the damages "which the plaintiff had sustained, arising from "the infringement of his rights by the defendants "by the use of the said two machines." * * *

"The decree in the case under consideration is "not final, within the decisions of this Court. The "injunction prayed for was made perpetual, but "there was a reference to a master to ascertain the "damages by reason of the infringement; the bill "was not dismissed, nor was there a decree for "costs. * * * It is said that the decree in this "case, by enjoining the defendants below from the "use of their machine, destroys their value and "places the defendants in a remediless condition. "That in the course of a few months their right to "run the machines will expire, and that no repara-"tion can be obtained for the suspension of a right "by the act of the Court. It is alleged, too, that "many thousands of dollars have been invested in "the machinery, which by such a procedure be-"comes useless. The hardship stated is an un-"answerable objection to the operation of the in-"junction, until all the matters shall be finally ad-"justed. *If the injunction has been inadvertently "granted, the Circuit Court has power to suspend "it or set it aside, until the report of the master "shall be sanctioned.*"

The rule is reiterated in *Beebe* v. *Russell*, 19 Howard, 283, which cites a number of authorities in the State Courts of Chancery.

In *Keystone Manganese & Iron Co.* v. *Martin*, 132 U. S. 91, 92, 93; this Court said speaking "through Mr. Justice Blatchford: "The Court made

"a decree perpetually enjoining the defendant from "entering upon or removing the mineral or any "part thereof from the land, and further ordering "that an account be taken of the quantity and value "of the mineral and ore already removed by the "defendant from the land, and that the defendant "account to the plaintiff for its value, and appoint- "ing a master to take said account and to hear "evidence and report the same to the Court. "From that decree the defendant has appealed to "this Court, and the case has been argued by the "appellee on its merits, and submitted on a printed "brief by the appellant. We think that the decree "is not a final decree, and that this Court has no "jurisdiction of the appeal. The decree is not "final, because it does not dispose of the entire "controversy between the parties. The bill prays "only for an injunction and an account of the "quantity and value of the ore taken from the "land by the defendant. The injunction is granted, "but the account remains to be taken. The case "is not one where nothing remains to be done by "the Court below except to execute ministerially its "decree. In all cases like the one before us this "Court has uniformly held that the decree was not "final and was not appealable."

In *McGourkey* v. *Toledo & Ohio Central Ry. Co.*, 146 U. S. 536, 545, 549, this Court said, speaking through Mr. Justice Brown (the italics are ours): "It may be said in general that if the Court make a "decree fixing the rights and liabilities of the par- "ties, and thereupon refer the case to a master for "a ministerial purpose only, and no further pro- "ceedings in court are contemplated, the decree is "final; but *if it refer the case to him* as a subor- "dinate Court and for a judicial purpose, as *to state* "*an account* between the parties, upon which a "further decree is to be entered, *the decree is not* "*final. Craighead* v. *Wilson*, 18 How. 199; *Beebe* "v. *Russell*, 19 How. 283. * * * In the case of

"the *Keystone Manganese Co.* v. *Martin*, 132 U. S., "91, the bill was in the nature of an action of tres- "pass for removing minerals from the plaintiff's "land, and prayed for an injunction restraining the "defendant from the commission of further tres- "passes, and for an account of the quantity and "value of the ore taken. The Court made a decree "perpetually enjoining the defendant from entering "upon or removing minerals from the land, and "further ordering an account, etc. This was held "to be not a final decree from which an appeal "could be taken to this Court, because it did not "dispose of the entire controversy between the par- "ties. This case is directly in point, and was re- "ferred to with approval in *Lodge* v. *Twell*, 135 "U. S. 232."

In *Latta* v. *Kilbourn*, 150 U. S. 524, 537, 538, 540, the first quotation from the opinion of Mr. Justice Brown was approved by this Court, speaking through Mr. Justice Jackson. There, it was held that a decree, which determined the rights of partners in the assets and profits of the partnership and decreed "that said defendant do account to the com- " plainants for their said share of the profits afore- " said; that this cause be, and the same hereby is, " remanded to the Court in special term, with in- " structions to refer the same to the auditor of the " Court to state said account upon the proofs in the " cause, and such further proofs as the parties may " offer, and for such further proceeding as may be " lawful and proper under this decree; and that " said defendant pay all costs of the cause;" was not a final decree.

This Court approved the same rule in *California National Bank* v. *Stateler*, 171 U. S. 447, 449; where a decree was held not to be final because thereafter " it would certainly be necessary for Chetwood to " prove out his costs, disbursements and attorneys' " fees before the amount for which he is ultimately " made liable could be ascertained. The settled " rule is that if a superior court makes a decree

"fixing the liability and rights of the parties and "refers the case to a master or subordinate court "for a judicial purpose, such, for instance, as a "statement of account, upon which a further decree "is to be entered, the decree is not final."

Similar rulings were made in *Union Mutual Life Ins. Co.* v. *Kirchoff*, 160 U. S. 374, 378; *Hollander* v. *Fecheimer*, 162 U. S. 326.

III.

The appeal should be dismissed, with costs.

Respectfully submitted,

A. L. PINCOFFS.

ROGER FOSTER,
Of Counsel for Respondent.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Notice.

To PHILIP MAURO, Attorney and Counsel for Pere Alfredo Luis Baglin, etc.

Please take notice that upon the submission to the Supreme Court of your petition for Writ of Certiorari we shall submit the annexed answer, cross-petition for Writ of Certiorari and brief.

Dated, New York, March 30th, 1909.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Attorneys and of Counsel for
The Cusenier Company.

Service of the foregoing notice and annexed answer, cross-petition and brief is hereby admitted this day of March, 1909.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Motion.

And now comes the Cusenier Company, by Adolph L. Pincoffs and Roger Foster, its attorneys, and move this Honorable Court, upon the certified Transcript of Record herein, and upon the annexed cross-petition, for a cross-writ of Certiorari directed to the Honorable the Judges of the United States Circuit Court of Appeals, within and for the Second Judicial Circuit, commanding said Court of Appeals to certify and bring before this Honorable Court the above entitled cause—lately before said Court of Appeals, wherein this respondent as defendant-appellant and the petitioners therein were complainants-appellees, for such further proceedings and for such relief as to this Honorable Court may seem just.

THE CUSENIER COMPANY,
By ADOLPH L. PINCOFFS and
ROGER FOSTER,
its Attorneys.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Answer and Cross-Petition.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The answer and cross-petition of the Cusenier Company respectfully show as follows:

1. It denies that the Order of Carthusian Monks is also known as the congregation of or Order of the Chartreux. It denies that it had maintained almost uninterruptedly for several hundred years its main Chartreuse and it further alleges that said order was an illegal and unauthorized Congregation and had not a right to own any property in the Republic of France.

2. It denies that said Carthusian Monks have carried on a manufacture of a certain liqueur or cordial for several hundred years, and it denies that said liqueur was manufactured in accordance with a secret recipe or formula and that said liqueur is exclusively manufactured by them. It denies that said liqueur is or has been favorably known by reason of the good repute of its makers, and it denies that the word "Chartreuse" constitutes a tradename, and it alleges that the reputa-

tion of said article was due to the peculiar qualities of the herbs which grew in the locality where said liqueur was manufactured, which locality had been known as Chartreuse long before the establishment of the said Monks.

3. It denies that the establishment at Tarragona referred to in Paragraph 3 of the petition is a continuance of the ancient business of making the liqueur or cordial known as Chartreuse, and it denies that any liqueur called "Chartreuse" is manufactured there and that the liqueur manufactured there is manufactured in accordance with any secret recipe or formula; and it denies that identically the same ingredients are used now for the said manufacture as had been used from time immemorial.

4. It admits that the liqueur or cordial manufactured by the monks prior to their expulsion from France has been commonly packed in the bottles and with the designs printed appearing opposite to page 4 of the petition, and it denies that the same are correctly set out in Paragraph 4 of said petition.

5. It denies that the registration referred to in Paragraph 5 of the petition was caused to be made by the said Order, or on its behalf, and it denies that the said registration was for the name Chartreuse, and that any rights were conferred by the same registration to the said Order or to the complainants herein.

6. It denies that the appointment and powers of Henri Lecouturier and his agreement with Mr. Joseph Cusenier are correctly set forth in Paragraph 6 of the petition, and it alleges that said Mr. Lecouturier was expressly and duly authorized and instructed by the Courts of the Republic of France to continue the business formerly carried on by the Carthusian Monks at the place where

such business had been carried on by them, and that the title to all the trademarks, tradenames and goodwill was vested in him by virtue of Decrees of the Courts having jurisdiction in the premises, and that he was given the exclusive right to harvest the plants, to which the cordial manufactured by the monks owed its peculiar qualities and reputation.

7. It admits that a bill was filed by the petitioners herein against it praying for the usual injunction and accounting. It was alleged in said bill that the defendants had made use of the word "Chartreuse" as a trademark to designate the said cordial or liqueur manufactured by them and that they attempted to sell to the public a spurious imitation article falsely representing that it was made pursuant to the co-called secret recipe which complainants claimed to own, and that said imitation liqueur was offered in bottles and cases similar in appearance to those long used by the complainants for the purpose of injuring the complainants and of deceiving the public. No evidence was introduced that any representation had ever been made by the defendant that the liqueur manufactured by it was made according to any recipe owned by complainants. It was found by the Circuit Court of Appeals that the liqueur had never been designated by the complainants as Chartreuse, that said word was of geographical origin and had been used on the labels in a geographical sense and that it had acquired a secondary meaning, indicating both that it was manufactured by monks and that it was made at a certain place, that its reputation was due to a great extent to the peculiar plants which grew in that locality; that the defendants had acted in good faith and in pursuance of the decrees of the Courts of the Republic of France by which the liquidator had been appointed, that the proof of deception was extremely unsatisfactory, that the parties represented by the

defendant had acquired the right in France to use the old labels and bottles and to designate their liqueur by the name of "Chartreuse", and also the right to manufacture their liqueur at the place where the herbs grew which gave the said liqueur its peculiar character and that they were entitled to mention this fact on their labels and bottles and to all the advantages resulting therefrom, and that to deprive them of the right to mention said locality would be to deprive them of a substantial right. In giving the defendant the right to make use of the word "Chartreuse", if it was so used as clearly to distinguish such liqueur from the liqueur or cordial manufactured by the complainants, the said Circuit Court of Appeals followed, as is stated in its opinion, the English Decree, which is referred to in the brief attached to the petition as the leading authority in favor of the complainants herein.

Cross Petition.

The said Cusenier Company further presents its cross petition and respectfully shows as follows:

1. That the complainants herein were, prior to the passage of the Association Act of 1901, an illegal and unauthorized association, having no civil rights and existing only by reason of a toleration which was entirely extra-legal and could be withdrawn at any time.

2. Before said Lecouturier was appointed as liquidator under the Association Act all the property of the Order, including all trademarks and goodwill, had been transferred by it to one Rey, a former procureur of the Order, by a deed bearing date of the 20th of November, 1897.

3. Thereafter it was finally decided by a Court of competent jurisdiction of the Republic of France, viz., the Court of Cassation, by its decision of July 31, 1906, that said Rey was a passive

trustee and that the property transferred to him formed part of the assets to be so liquidated, and the title thereto was vested in the said Lecouturier and passed to the Compagnie Fermiere de la Grande Chartreuse, whose agent the defendant is.

4. That all the proceedings appointing said Lecouturier as liquidator and determining the extent of the rights vested in him, and all the other proceedings determining the rights of the respective parties herein, were made by Courts of competent jurisdiction in France after due notice to the complainants herein, and after they had been heard in respect to their rights; that all such property, trademark, good will, so vested in Lecouturier were obtained at a judicial auction sale held by order of the Court having jurisdiction of the premises, by the Compagnie Fermiere de la Grande Chartreuse, and are now vested in it.

That these defendants were the agents, at the beginning of the suit, of said Mr. Lecouturier, and are now the agents of the Compagnie Fermiere de la Grande Chartreuse.

5. The complainants herein had no property in the United States, they did not manufacture the liqueur here. After they began the manufacture at Taragona they completely abandoned the old labels and trademarks and use of the word Chartreuse, and gave the widest publicity, not only in trade papers but in papers of general circulation, to the fact that the old labels no longer indicated that the liqueur was manufactured by them. The evidence adduced by complainants shows that this fact was known to the trade and there is no evidence whatever that any one of the public was deceived into the belief that the liqueur sold by the defendant was manufactured by the Monks.

6. The word "Chartreuse" was a geographical term, designating the place or territory where the monks formed their establishment, it was never

used by the monks to designate their liqueur; at the most it could be said to have acquired a secondary meaning, denoting not only that the liqueur was manufactured by monks but primarily that it was manufactured at a certain place, the habitat of the herbs to which the liqueur owes its peculiar aroma and qualities.

7. The said Circuit Court of Appeals in its opinion recognized the fact that the primary meaning of the word "Chartreuse" was geographical and that it only later acquired a secondary meaning, but yet it affirmed that part of the decree of the Circuit Court which holds that the word symbol "Chartreuse" constitutes a technical trademark. It recognized that there is no proof of actual deception, that the defendant has acted in absolute good faith and is not to be treated as a pirate, and it then proceeded to give the complainants relief which can only be justified if the fact of unfair competition had been affirmatively found to exist.

8. From this it will be seen that this case involves the determination of important questions:

Whether geographical expressions can ever be considered as technical trademarks and entitled to protection as such;

Whether a trademark or protection against unfair competition can be claimed, not only after the word and label for which protection is sought, have been abandoned, but after it has been proved that the former owner has given publicity to the fact that they no longer represent the article of his manufacture, and after it has been proved that he has succeeded in convincing the public of that fact.

Whether, in the absence of any business or manufacture in the United States, a foreign corporation can claim title to a trademark, the title to which it has lost by virtue of a decree of a competent court in its country of origin, after full notice and opportunity to be heard, and whether

relief can be granted on the ground of unfair competition after it has been affirmatively found that the defendant has acted in good faith, and when there is no evidence that the public has been deceived.

WHEREFORE, in order that the foregoing and other matters may be properly considered and adjudicated, your petitioners pray that this Honorable Court will grant its cross writ of Certiorari, directed to said Circuit Court of Appeals, for the Second Circuit, requiring the complete record of this cause in said Court to be certified to this Court, and that this Court will thereupon proceed to correct the errors herein complained of, and such other errors as may appear in said record, and reverse the decree of said Circuit Court of Appeals, in so far as it affirms the decree of the Circuit Court, and remand said cause with directions to dismiss the bill herein and give to your Petitioners such other and further relief as the nature of the case may require, and to the Court may seem proper in the premises.

And your Petitioner will ever pray.

THE CUSENIER COMPANY,
By
JULES AUBRY, (L. S.)
Vice-President.

ADOLPH L. PINCOFFS and
ROGER FOSTER,
Its Attorneys and Counsel.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of the Order,

against

THE CUSENIER COMPANY.

BRIEF IN SUPPORT OF CROSS-PETITION.

The Petitioners in this case have taken an appeal to this Court which we have moved to dismiss on the ground that the decree appealed from is not a final one.

If the Petitioners have the right to appeal at any time either from the decree in its present form, or after the accounting has been had, it could only be on the ground that this suit involves rights granted under the Trademark Law of the United States.

If this position is well taken, the decision of the Circuit Court was not originally based exclusively on any alleged diverse citizenship of the parties hereto. If this is so, the decree is not final and no Writ of Certiorari can be allowed.

Without discussing this point at length, we merely wish to say that if the Court should decide to grant the Writ of Certiorari, we desire to have the case in its entirety brought before the Court so as to have an opportunity to raise the points on which we rely in support of our claim that the Circuit Court of Appeals should have directed the bill to be dismissed.

Some of the grounds which we desire to urge on the Court and which we consider of great interest are as already outlined in our Cross-Petition:

I. That, it being practically undisputed that the word "Chartreuse" is of geographical origin, it can never become a technical trademark. If it can be protected at all it must be on the ground that it has acquired a secondary meaning and entitles the user to be protected against unfair competition.

The evidence in this case shows that the term sought to be protected is more closely identified with the place of fabrication than with the name of the manufacturer, and apart from this, the evidence shows that every element of unfair competition is wanting.

II. Perhaps of still greater importance for the public is the question whether a foreign company which does not manufacture its products in this country, can acquire a trademark and good will so entirely independent from that existing in the country of origin, that it survives the decree of a competent court therein in a suit to which it has been a party, transferring the title to all its property, specifically mentioning the good will and trademarks, to a receiver, and whether its right will be held to be superior to that of a third party in the country of origin, who has acquired his title from the receiver in pursuance of a decree of a court having jurisdiction in the premises.

III. Another question is whether the right to a trademark or the right to be protected from so-called unfair competition can exist after the party claiming such protection has by its own acts induced the public to believe that such trademark or label no longer indicates articles of its manufacture.

We do not wish now to argue the merits of this case at length, we merely submit the foregoing arguments which show that if the Court should grant the petition for Writ of Certiorari of the complainant, it is only fair to the defendant that it be given an opportunity to raise these points on the hearing so that the whole matter may be before this Court and may be decided by it in accordance with justice and equity.

Respectfully submitted,

THE CUSENIER COMPANY

By

ADOLPH L. PINCOFFS and

ROGER FOSTER,

its Attorneys and Counsel.

FILED
DEC 28 1909
JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States

No. 99. October Term, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all other members of said Order

Petitioners

against

CUSENIER COMPANY

Respondent

(21,410)

Notice, Answer to Petition for Certiorari and Brief

A. L. PINCOFFS
ROGER FOSTER
of Counsel for Respondent

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Supreme Court of the United States.

PÈRE ALFRED LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order.

Petitioners,

against

THE CUSENIER COMPANY,

Respondent.

No. 291.
October Calendar. 1909.

Notice.

To PHILIP MAURO, Attorney and Counsel for Père Alfredo Luis Baglin, etc.

PLEASE TAKE NOTICE that upon the submission to the Supreme Court of your petition for Writ of Certiorari we shall submit the annexed answer, and brief.

Dated, New York, December 27, 1909.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Attorneys and of Counsel for
The Cusenier Company.

Service of the foregoing notice and annexed answer and brief is hereby admitted this day of December, 1909.

Supreme Court of the United States.

Answer.

PÈRE ALFRED LUIS BAGLIN, et al., *Petitioners,* *against* THE CUSENIER COMPANY, *Respondent.*	No. 291. October Calendar. 1909.

The answer of the Cusenier Company to the petiton herein respectfully shows as follows:

I. It admits the allegations contained in Nos. 1 and 2 of the petition herein. It alleges that the proceedings in the Circuit Court of Appeals, to which said petition refers, were decided upon a writ of error to review an order of the Circuit Court of the United States for the Southern District of New York, which punished this respondent for an alleged contempt by an alleged violation of an injunction, and as such punishment imposed a fine of $100, "one-half to the United States and one-half to complainants."

II. It admits that it took its appeal and likewise its writ of error from the said order to the United States Circuit Court of Appeals for the Second Circuit. And it alleges: that on the 11th day of October, 1909, a motion to dismiss that appeal was argued, together with a motion to prefer said case. That the Circuit Court of Appeals reserved its decision as to the motion to dismiss the appeal and advanced the case and ordered the same to be set down for argument on said writ of error. That subsequently, said writ of error was argued on the 8th day of November, 1909, and the decision was handed down herein in the terms following:

"We are satisfied it was error to hold de-
"fendant in contempt for translating the whole
"or any part of the label which the Court said
"it might use, the Court having expressly
"stated that such label might be translated
"into any language. No mistranslation is
"proved."

III. It denies the allegations contained in Nos. 5 and 6 of the petition herein, and alleges that the questions therein enumerated are in no way involved in such proceedings; that it is not alleged or claimed by petitioner that the label used by defendant, either in type, color or general arrangement has any similarity with petitioner's label; that it is not alleged by complainants that said defendant claims the right to use the words "Pères Chartreux" in virtue of the permission granted to it to use the word "Chartreuse" in the manner set out in the opinion and the labels suggested by the Court, that such right is claimed because defendant was expressly authorized to translate into any language the label suggested by the Court, because the words "Carthusian Monks" occur in such label and the words "Pères Chartreux" are a proper and correct translation of such words. Therefore, the only question involved in the proceedings sought to be reviewed by this application is one that is purely grammatical.

WHEREFORE, it prays that the petition for the additional Writ of Certiorari herein be denied.

THE CUSENIER COMPANY,
By
JULES AUBRY,
Vice-President,

ADOLPH L. PINCOFFS and
ROGER FOSTER,
Its Attorneys and Counsel.

Supreme Court of the United States.

PÈRE ALFRED LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent.

No. 291.
October Calendar. 1909.

BRIEF FOR RESPONDENT

In Opposition to Motion for Writ of Certiorari.

This is an application for a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit, requiring that the proceedings therein upon a writ of error in a contempt proceeding be certified to this Court, "and that the same may "be annexed to the main transcript hitherto certi- "fied to this Court," number 291 on the October Term, 1909.

The original cause, to which it is sought that the transcript of the contempt proceedings be annexed, is under a writ and cross-writ of *certiorari*, to review the decision of the Circuit Court of Appeals for the Second Circuit, modifying an injunction against the use of certain labels upon bottles of liqueur. The proceedings which it is now sought to review were instituted by the Circuit Court of Appeals subsequent to the previous writ and cross-writ of *certiorari*, to review an order of the Circuit Court of the United States for the

Southern District of New York, which punished this respondent for contempt in violating the previous injunction. The proceedings in the Circuit Court also were instituted subsequent to the writ and cross-writ of *certiorari*. The order punishing the defendant for contempt imposed a fine of $100, "one-half to the United States and one-half to the complainants."

I.

This is not an original, but an auxiliary proceeding.

It seeks to make an action of the Court in a subsequent independent criminal proceeding a part of a proceeding already pending in a civil suit. Such a confusion of the records of this Court should not be permitted. The proceedings in the Circuit Court of Appeals were reviewed by writ of error. They could only be reviewed by writ of error because the proceeding was criminal and not civil. The relief was granted under *Matter of Christensen Engineering Co.*, 194 U. S., 458, 461; where, as here, the order of the Circuit Court punished a defendant for disobeying an injunction, and he was "ordered to pay a fine of $1,000, "one-half to the United States and the other half "to the complainant." The Chief Justice of the United States said (at p. 401):

> "In the present case, however, the fine pay-
> "able to the United States was clearly puni-
> "tive and in vindication of the authority of
> "the Court, and, we think, as such it dominates
> "the proceedings and fixes its character."

And again, in *Doyle vs. London Guarantee Co.*, 204 U. S., 599, 604, Mr. Justice Day said:

> "It therefore appears that the only right
> "to review given to the Circuit Court of Ap-

"peals in contempt proceedings is derived "from the act giving that court such right "in criminal cases."

See also

Bessette vs. W. B. Conkey Co., 194 U. S., 324.

II.

Even if this were an original application and not auxiliary, the writs could not be granted.

The Court will not grant a writ of *certiorari* in a criminal case, except at the instance of the defendant.

U. S. vs. Dickinson, 213 U. S., 92.

A party, whose application to punish his opponent for contempt has been denied, cannot bring the proceeding to this Court for review.

Newport Light Co. vs. Newport, 151 U. S., 527.

The only way in which the decision of the Circuit Court of Appeals could be reviewed would be for alleged want of jurisdiction. This point has been foreclosed by the previous decisions of this Court, above cited. It could, moreover, only be taken by an application for the writ of *mandamus*.

See

Matter of Christensen Engineering Co., 194 U. S., 458.

III.

The proceeding sought to be reviewed in no way affects the merits of the controversy between the parties hereto.

The proceedings sought to be reviewed by this application in no way affect the questions whether the Circuit Court of Appeals properly modified the injunction granted below so as to allow the defendant to state the place of fabrication of its liqueur and the corporate name of the company making it. The rights of the parties can in no way be affected by the subsequent acts of the defendant. The decision of the Court of Appeals sought to be reviewed herein is a matter of record and can be referred to by the complainants on the argument without filing the record in this Court. Petitioners' object in asking for a writ of *certiorari* must be to ask the Court to pass on the merits of the question. The petitioner asks the Court to reverse the decision because the defendant has violated the injunction directed by the Circuit Court of Appeals, and, at the same time, it states that the respondent "in availing "itself of the permission so granted to it by said "Court of Appeals, is *inevitably* making use of "and unlawfully trading upon the good-will and "reputation personal to your petitioners." Even if the acts of the defendant in using the words "Pères Chartreux" were a violation of the rights of the complainants, yet, if they are the "inevitable" consequence of the permission granted to it, it might be argued that it was wrong to grant the permission, but it is difficult to see how an act which is the "inevitable" consequence of such permission, is at the same time a violation of it.

The words of the opinion of the Circuit Court of Appeals cited in the answer herein, clearly shows that none of the questions referred to by the petitioner are in reality involved herein. This Court will certainly not presume that the Circuit Court of Appeals did not know what it intended to decide. The only question involved is purely grammatical, namely: whether the words "Pères Chartreux" correspond with the words "Carthusian Monks~~, or Fathers (Pères Chartreux)~~".

In view of the fact that the decree which defendant is accused of violating, expressly adjudicated that the trademark in question is owned by the "Carthusian Monks or Fathers (Pères Chartreux)", the question is one as to which there can be little doubt.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Of counsel for Cusenier Company,
Respondent.

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FILED
MAR 20 1911
JAMES H. McKENNEY
CLERK

Supreme Court of the United States

No. 99

October Term, 1910

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order

Petitioners and Cross-Respondents

vs.

THE CUSENIER COMPANY

Respondent and Cross-Petitioner

SUPPLEMENTAL BRIEF ON QUESTION OF CONTEMPT

A. L. PINCOFFS
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Of Counsel for Defendant
and Cross-Petitioner

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Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General, etc.,

Petitioners and Cross-Respondents,

vs.

THE CUSENIER COMPANY,

Respondent and Cross Petitioner.

By permission of the court this brief is submitted on the question of the contempt proceedings which it is sought to bring before this court by supplemental writ of certiorari.

We have filed a brief opposing the granting of such writ. But in case the writ should be granted by the court we desire to submit the following considerations.

An order was made by Mr. Justice Hough punishing this defendant for contempt for violation of the final injunction entered herein and imposing a fine of one hundred dollars ($100.00), one-half to be paid to the United States and one-half to the complainant. A writ of error to review such decision was granted. An appeal was also taken from the order and a motion to dismiss that appeal was made and argued on the 11th day of October, 1909, at which time a motion for a preference was also made. The Court granted the motion for the preference and set the case down as a preferred cause for the November Term and stated that the motion to dismiss the appeal would then be disposed of.

The order of the Circuit was reversed by the Circuit Court of Appeals on the ground that we had done only what we were expressly authorized to do and that no mistranslation had be proved.

The circumstances leading up to this proceeding are, briefly stated, as follows: In the opinion delivered by the Circuit Court of Appeals in deciding the appeal herein, it is stated that defendant could use certain labels suggested by it and set out in the opinion. In the labels so suggested the complainants were described as the "Carthusian Monks." The Court stated expressly that defendant was at liberty to use any language it might deem proper and also stated that it did not intend to restrict the defendant to the use of the labels so indicated.

The defendant adopted a label which it claims was in all respects completely in accord with the suggestions of the Court. It described the liqueur sold by it by the words in French "Cette Liqueur est Fabriquee a la Grande Chartreuse par la Compagnie Fermiere de la Grande Chartreuse" and then added in English "Made in France by the Cie. Fermiere de la Grande Chartreuse, Successor to the Liquidator of the Property of the Peres Chartreux."

As stated by Mr. Scott in his affidavit, defendant's counsel was requested to discontinue the use of these labels in so far as they described Mr. Lecouturier as Liquidator of the Property of the "Peres Chartreux." When defendant's counsel refused, substantially on the grounds which were afterwards set out in his replying affidavit herein, an order to show cause herein was served on him ordering the defendant to show cause why it should not be enjoined "from using the words Peres Chartreux or any synonymous expression in connection with any liqueur or cordial not made by the Carthusian Monks."

The order to show cause was granted on an affidavit in which it was alleged that defendant had not spoken the truth about its wares, as both parties were ordered to do by this Court, when it described Mr. Lecouturier as Liquidator of the property of the "Peres Chartreux;" that it should have used the words "Congregation of the Chartreux" or "Order of the Chartreux" or "Carthusian Monks;" that the words "Peres Chartreux" were not a correct translation of the words "Carthusian Monks" because the Carthusian Monks consist of two classes, the Fathers and the Brothers. It was also charged that the object of the defendant was to trade on the reputation of the complainants who had adopted a label in which they stated that the liqueur made by them was made by the "Peres Chartreux" (presumably in pursuance of the injunction of the Court that both parties tell the truth about their wares.)

It was admitted that, except for these two words, the label adopted was in compliance with the label suggested by the Court.

It will be noted that the label used by the defendant was not annexed to the affidavit, that there is no charge made that by color, form or arrangement it in any way resembles the old label, which was litigated in this suit, or the new label subsequently adopted by the complainants. Nor is it in any way alleged that the words "Peres Chartreux" are given any undue prominence. In fact, from the form of label as printed in the moving affidavit (on page 6 of the record), it appears that the words indicating that the liqueur is made by the Compagnie Fermiere in France, are given much more prominence than the rest of the label and that

the words "Peres Chartreux" are much less prominent than the words "Carthusian Monks" on the label suggested by the Court.

A bottle bearing the label in question has been handed up to this Court.

It is apparent that the idea, that there was any violation of the injunction herein was entirely absent from the minds of the complainants at the time they made this application, otherwise they certainly would not have resorted to the remarkable procedure of asking the Court to vary a final decree by an injunction granted on affidavit. On the argument, Judge Hough took the view that no injunction as prayed for could be granted, but treated this application for a new injunction as a motion to punish for a violation of the old injunction. The order now before the Court is the result.

POINTS.

I.

The use of the words "Peres Chartreaux" did not constitute or suggest a falsehood, and the claim that any customer could be deceived by it is contrary to the theory on which the injunction herein was granted.

Mr. Justice Hough stated in his decision that the description of Mr. Lecouturier was, perhaps, not strictly correct, but that it was a "verbal inaccuracy of small moment." It is difficult to see how he could have decided otherwise as the Circuit Court of Appeals did not use the expression "Congregation of the Chartreux" but used instead the words "Carthusian Monks," in the form of label suggested by it.

He also found that "Peres Chartreux" is a fair equivalent of "Carthusian Monks;" (see opinion, fol. 44); yet he found that in using the words "Peres Chartreux" we have stated or suggested a falsehood. His opinion is based on the fact that we have mixed up French and English and that we might as well have used the words "Carthusian Monks" as the words "Peres Chartreux."

It is respectfully submitted that we were given the permission to translate the label suggested by this Court into any language. If it is true, as stated by Judge Hough, that our translation of the words "Peres Chartreux" is correct, who is injured, or what indication of fraud can be found from the fact that the rest of the passage in question was not also translated? What person can be deceived by the use of the label as printed at present, who would not have been deceived if the whole had been translated into French as we had the right to do?

Judge Hough claims that these words were used with a sinister motive. He says that we used them (fol. 45):

> "Evidently because the ordinary customer is accustomed to the words 'Peres Chartreux' on his bottle; he knows no French, but he looks for these words, and if he does not find them he is disquieted—even though he finds the familiar 'Chartreuse' twice repeated."

We ask again, would the ordinary customer "who does not understand French" be less liable to be deceived if we had translated the whole label into French, instead of stating in plain English that the liqueur is made in France by the Compagnie Fermiere?

But apart from this, it is respectfully submited that the assumption of facts, made here in order to find a basis to punish the defendant for contempt, is entirely inconsistent with the whole theory on which the relief in this action was granted. In its bill, complainant alleges that by the use of the old label by the defendant, the public was deceived. The Court will remember that a mass of testimony was introduced by the complainant to prove that it was generally believed that the old labels on which the word "Chartreuse" appears, still indicated to the public that the contents were the product of the Monks. The Court below in its opinion said that the proof of deception was unsatisfactory, but that, while it was more a matter of inference than proof, it might be that the public still believed the old labels to represent the goods manufactured by the complainants. It was on that ground that the injunction was granted. What would have been the result if the complainants had introduced proof that the use of the word "Chartreuse" in no way indicated to the public that the goods were made by the Monks, but that the ordinary customer is now so accustomed to the words "Peres Chartreux," that he is disquieted by its absence even if the word "Chartreuse" appears on the label? Would not this evidence have destroyed the possibility of drawing the inference which the Court drew in its opinion and which was an essential element of its decision? Yet this assumed state of facts, which, if proved, would have completely destroyed complainant's case, is now made the basis of punishing us for contempt for violating a decree which is based on a totally different state of facts.

II.

If there is any infringement of any rights of the complainant derived from its new label, such right should be enforced by an independent suit.

It is not pointed out what provision of the decree we violated. There is no claim made that we have used the word "Chartreuse" in a way not authorized by the Court. If it is said that we have attempted to make use of the good-will and reputation of the complainants in putting out any liqueur or cordial not made by complainants, the answer to this contention is that the good-will herein referred to is, of course, the good-will gained by the use of the trade-mark which was at issue in this litigation, namely, the word symbol "Chartreuse," accompanied by the signs and labels formerly used by complainants. It certainly cannot refer to the good-will obtained by the use of the new trade-mark, which was in no way at issue in this litigation and as to the validity of which no decision whatever has been made.

Where an injunction is based on the infringement of a particular label, it will not be construed as referring to future infringements of entirely different labels not at issue in this suit. As a new label is adopted by the complainant in the former suit, it should try out the question whether or not the defendant is guilty of an infringement by resorting to a suit in equity, where the defendant has a right to cross-examine the witnesses produced by the complainant. It cannot try that question by an application to punish for contempt based on affidavits.

III.

The moving papers do not show any infringement in violation of complainant's rights.

But if it were conceded that in a proper case, such relief could be obtained, it certainly is true that in order to entitle the complainant to an order punishing the defendant for contempt, it must make out a case which, if the suit were an original one, would entitle him to an injunction. Can it be claimed for a moment that if an injunction were asked for, on the case made by the complainant, such an injunction would be granted? The question, as stated in the replying affidavit, was not entirely new to the Circuit Court of Appeals. We quote from the replying affidavit herein:

> "When this decision was handed down, the counsel for the complainants addressed a communication to the Circuit Court of Appeals, asking it to modify its opinion and decision, and objecting particularly to the use of the words 'Carthusian Monks,' at the bottom of the label, stating particularly that owing to the use of such words 'an ordinary purchaser, if not thoroughly versed in the events resulting from the French Association Act, would quite naturally suppose defendant's product to be in some way connected with the Carthusian Monks." That in answer to this letter, a communication was addressed to complainant's Counsel by Hon. Alfred C. Coxe, refusing to modify the opinion and the decree, and stating that 'we think that no one can be deceived by either label suggested by us unless his mental powers have been hopelessly impaired."

Would not the same words apply with even greater force if this were the first time that the respective claims of these parties were before

the Court and an application was made on the papers now before the Court to enjoin the defendant from using the words "Peres Chartreux" in the manner adopted by it? It is prominently and clearly stated on the label by whom and where the liqueur is made, no charge of any similarity in type, color or arrangement is alleged to exist. Could any sane human being, on reading this label, which states that the article is made in France by the Compagnie Fermiere, possibly imagine that it was made in Tarragona by the Peres Chartreux?

IV.

The complainants are estopped from claiming that "Peres Chartreux" is not a correct translation of "Carthusian Monks."

It is not only true, as stated by Judge Hough, that the words "Peres Chartreux" are a fair equivalent of the words "Carthusian Monks" but it has been stated repeatedly and sworn to by the complainant, who, of course, must be presumed to obey the injunction of the Court to tell the truth, that "Peres Chartreux" is the proper and usual name for their order. During all this litigation, it has never entered their minds to claim that the fact that the Order in reality consists of two classes, makes the use of the words "Peres Chartreux" to designate such order improper or incorrect.

Some time after the Order left France and had gone to Tarragona to manufacture their liqueur, it issued a circular (fol. 1386) of which a translation as printed there, is: "The Peres

Chartreux is dispossessed in France of their former trade-marks, sold at auction, have carried away their secret and manufacture at Tarragone."

They base their whole case on the fact that the Order of the Carthusian Monks have continued to make the same liqueur at Tarragona, and when they want to make that fact clear to the public they state that their liqueur "is made in Tarragona by the Peres Chartreux." (See new label on page 1297). When their agent in America wants to introduce their liqueurs to the public, he states (see fol. 1292 of Record), that the Carthusian Monks (Peres Chartreux) have located at Tarragona and that now it is necessary "under the nw conditions to name this liqueur Peres Chartreux after the Order of Monks owning the secret process employed in its manufacture."

They have, themselves, put in evidence the judgment of the French Court, allowing them to sell their liqueur in France with their new label, on the ground that their name is "Peres Chartreux" and that such words are entirely distinct from the word "Chartreuse."

As is stated in the replying affidavit herein in this very case, they have sworn in their complaint that the Order of Carthusian Monks is commonly kown as "Peres Chartreux;" in their bill of complaint, they have used the words "Order of Peres Chartreux" and "Order of Carthusian Monks" as interchangeable terms, and finally in the decree which was signed by the Court, and presumably prepared by them, they have expressly asked the Court to adjudicate that the trademark in question belongs to the "*said complainants, the Carthusian Monks or Fathers (Peres Chartreux)*". (Record, p. 1567, fol. 2161-2162.)

We respectfully suggest that it does not lie in the mouth of these complainants, under these circumstances, to insist that we have not the right to describe them in the same terms which they are known, and under which they are described in this very decree.

In its opinion the Circuit Court of Appeals states (164 Fed. Rep., 25, 30), that the label used by the complainants does not contain a misstatement. That label described them as *"Peres Chartreux."* If this description is correct, it is correct, no matter by whom it is used. We cannot be held to have stated an untruth, or to have violated the injunction, because we used the term thus expressly approved by the Court.

Respectfully submitted,

A. L. PINCOFFS,
ROGER FOSTER.

Of Counsel for Defendant and Cross-Petitioner.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

PERE ALFREDO LUIS BAGLIN, SUPERIOR-GENERAL, ETC.
Complainant-Appellee and
Defendant in Error

vs.

THE CUSENIER COMPANY
Defendant-Appellant and
Plaintiff in Error

TRANSCRIPT OF RECORD

ERROR TO AND APPEAL FROM CIRCUIT COURT OF THE UNITED STATES
THE SOUTHERN DISTRICT OF NEW YORK

PRINTED UNDER THE DIRECTION OF THE CLERK



INDEX.

	PAGE
Writ of Error	1
Clerk's Certificate	2
Order to Show Cause	4
Affidavit of Ralph L. Scott	5
Affidavit of A. L. Pincoffs in Opposition	10
Memo., HOUGH, *J.*	15
Order	16
Petition of Appeal	18
Assignment of Errors	19
Bond	21
Citation (Writ of Error)	27
Citation (Appeal)	28
Clerk's Certificate	30

United States of America, ss: 1

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court, before you, or some of you, between PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., and CUSENIER COMPANY, a manifest error hath happened, to the great damage of the said CUSENIER COMPANY as is said and appears by its complaint. 2
WE, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 22nd day of September, 1909, that the record and proceedings aforesaid being 3
inspected, the said Judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 25th day of August, in the year of our Lord one thousand nine hundred and nine and of the Independence of the United States the one hundred and thirty-third.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

[SEAL.]

The foregoing writ is hereby allowed.

C. M. HOUGH,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages numbered from 3 to 29 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of CUSENIER COMPANY, Plaintiff in Error, against PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., Defendant in Error, as the same remain of record and on file in said office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of October, in the year of our Lord one thousand nine hundred and nine and of the Inde-

pendence of the United States the one hundred and thirty-fourth. 7

JOHN A. SHIELDS,

[SEAL.]

Clerk.

(Endorsed)—The U. S. Circuit Court of Appeals for the Second Circuit.—Cusenier Company, Plaintiff in Error, *vs.* Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, etc., Defendant in Error.—Writ of Error.—A. L. Pincoffs, of Counsel for Plaintiff in Error.—Due service of a copy of the within Writ of Error is hereby admitted this 27th day of August, 1909. C. A. L. Massie, 8 Attorney for Defendant in Error.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 28, 1909.—John A. Shields, Clerk.

10 At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the Court rooms thereof in the Federal Building, Borough of Manhattan, City of New York, this 29th day of July, 1909.

Present—Hon. HENRY G. WARD,
U. S. Circuit Judge.

PERE ALFREDO LUIS BAGLIN, 11 Superior General of the Order of Carthusian Monks, etc., vs. CUSENIER COMPANY.	In Equity No. 8949.

Order to Show Cause.

This cause coming on to be heard on the annexed Scott affidavit (verified herein July 29, 1909), it is this day

12 ORDERED that the defendant show cause before his Honor Judge HOUGH at the next ensuing motion day of this Court to be held in the Court rooms, Federal Building, Friday, August 13, 1909, why the defendant, its associates, etc., should not be enjoined from using the words "PERES CHARTREUX" or any synonymous expression, in connection with any liqueur or cordial not made by the Carthusian Monks; and it is further

ORDERED that this order may be served on counsel for defendant at any time prior to or on the

2nd day of August, 1909, and that the defendant 13
serve on counsel for complainants its reply papers, if any, on or before 12 o'clock noon of Wednesday, August 11, 1909.

(Signed) H. G. WARD,
U. S. Circuit Judge.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK. 14

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, etc., vs. CUSENIER COMPANY.	In Equity No. 8949.

Scott Affidavit.

15

STATE OF NEW YORK, } ss.:
County of New York, }

RALPH L. SCOTT, being duly sworn, deposes and says: I am of counsel for the complainants in this cause and am familiar with the transcript of record herein and all proceedings so far had. The opinion of the Court of Appeals (164 Fed. Rep., 25), says, page 30:

> "The common sense solution of the "problem, it seems to us, is to compel both "parties to tell the truth about their goods."

And on page 31, of the reported opinion, the Court of Appeals suggests two forms of label which the defendant may use.

Within the last few days it has come to my notice that defendant is putting out its liqueur in bottles bearing a label which instead of following the spirit of the opinion of the Court of Appeals and the phraseology recommended by the Court of Appeals, is in violation of that spirit and is an appropriation of the principal words of the new label of complainants, viz.: "PERES CHARTREUX."

I set forth below, the wording of the defendant's present label, which appears on the right. At the left appears the label suggested by the Court of Appeals which is the more nearly followed by the defendant.

LIQUEUR made at the GRANDE CHARTREUSE by the COMPAGNIE FERMIERE successor to M. LECOUTURIER, LIQUIDATOR of the property of the CARTHUSIAN MONKS.	CETTE LIQUEUR EST FABRIQUEE a la GRANDE CHARTREUSE par la COMPAGNIE FERMIERE de la GRANDE CHARTREUSE MADE IN FRANCE by the Cie. Fermiere de la Grande Chartreuse Successor to the Liquidator of the Property of the Peres Chartreux.

The label used by the defendant follows substantially the label suggested by the Court of Appeals, with the exception of the last two words. The Court of Appeals uses the expression "Carthusian Monks,"—the defendant uses the expression "Peres Chartreux."

All through the record of this cause and in certified copies of opinions by the French tribunals, which were put in evidence, it appears that Lacou-

turier was appointed liquidator of the property of 19
the "Carthusian Monks," or liquidator of the property of the "Congregation of the Chartreux," or liquidator of the property of the "Order of the Chartreux." In fact, as appears by Defendant's Exhibit Judgment of the Civil Tribunal of Grenoble, France, under date of March 31, 1903, the Procureur of the Republic of France presented to the Tribunal a petition to have Lecouturier named as Liquidator of the property of the "Congregation of the Chartreux"; and in the judgment of the Tribunal (p. 1505 of the Transcript of Record) appears the following:

> "The Court named Mons. Henri Lecou- 20
> turier judicial administrator of the Tribunal of the Seine, sequestrating administrator and liquidator of the properties of the so-called 'Congregation of the Chartreux.'"

Defendants' Exhibit No. 22, "Extract from the Records of the Court of Cassation" (Transcript, p. 1411), contains the following:

> "Mr. Henri Lecouturier, judicial administrator of the Civil Tribunal of the Seine, residing at 28 rue du Mont-Thabor, Paris, in his capacity of judicial liquidator and ad- 21
> ministrator-Receiver of the dissolved 'Congregation of Carthusian Monks.'"

Defendant's Exhibit, Defendant's Proposed Circular, (transcript, p. 1413), under date of July 6, 1907, contains the following:

> "After the congregation of Carthusian Monks was dissolved the French Government put this property * * * in the hands of a Receiver or Liquidator, Mr. Henri Lecouturier." * * *

22 The foregoing quotations might be multiplied many times to show that the liquidator was *not* appointed to take charge of the property of the "Peres Chartreux,"—and the Transcript of Record herein does not show a single instance where the defendant has even so contended; on the other hand, it everywhere appears by the Transcript that Lecouturier was appointed liquidator of the property of the *Order* of the *Congregation*,—which is the same thing.

Defendant's new label does *not* tell the truth (as required by the Court of Appeals), nor does it follow the label suggested by the Court of Appeals,
23 —because it uses the expression "Peres Chartreux" instead of "Carthusian Monks." The "Carthusian Monks," "Order of the Chartreux" and "Congregation of the Chartreux" are all synonymous expressions and, as such, are of course interchangeable. The Order, or Congregation, is composed of two distinct classes of men,—"les peres et les Freres" (the Fathers and the Brothers); the Fathers (les Peres) are those in authority, while the Brothers (les Freres), are those members of the Order who have not attained to the rank of Fathers, and are those who do the manual labor, etc.

After the Carthusian Monks were expelled from
24 France, and set up their establishment at Tarragona, they adopted a new label (which has since gained great notoriety and favor), the prominent words thereon being "Peres Chartreux." This new label was put in evidence in this case by the defendant ("Defendant's Exhibit, Complainants' Label," Transcript, p. 1297), and its principal wording is as follows:

LIQUEUR

FABRIQUEE a TARRAGONE

par les

PERES CHARTREUX

The use of these words,—"Peres Chartreux,"—on the new label of the defendant is additional evi-

dence of the defendant's attempt to trade on the 25
reputation and good-will of the complainants, it affords the dealers of defendant an additional opportunity to dispose of defendant's liqueur as and for the liqueur of the Monks; and for these reasons, as well as those set forth above, the defendant should *not* be permitted to use the expression "Peres Chartreux" or any synonymous expression.

Immediately after it came to my attention that defendant was putting out its liqueur in bottles bearing the label above complained of, I wrote to A. L. Pincoffs, Esq., of counsel for defendant, stating complainants' objection to the use of the words "Peres Chartreux" on the label of the defendant, 26
and giving our reasons for such objections, and requested that he instruct his client to discontinue forthwith the use of such expression. Mr. Pincoffs replied, under date of July 23, 1909, declining to do so, his letter concluding as follows:

> "After my clients submitted the label in its present form to me it never entered my mind that any objection would be made to it, or that it did not conform to the provisions of the injunction, and I do not feel at liberty, now that the label has been printed and in actual use, to advise them to change the same." 27

I offer to produce in Court my correspondence with Mr. Pincoffs.

RALPH L. SCOTT.

Subscribed and sworn to before me
this 29th day of July, 1909.

WILLIAM E. HILLS,
[SEAL.] Notary Public,
New York County.

Due and timely service of the foregoing Order to Show Cause, Scott Affidavit, and proposed order, is hereby admitted this 2nd day of August, 1909.

A. L. PINCOFFS,
Of Counsel for Defendant.

(Endorsed)—U. S. Circuit Court, Southern District of N. Y.—Filed Aug. 14, 1909.—John A. Shields, Clerk.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., Complainant. AGAINST CUSENIER COMPANY, Defendant.	In Equity, No. 8949.

STATE OF NEW YORK, County of New York, } ss.:

ADOLPH L. PINCOFFS, being duly sworn, deposes and says: I am of counsel for the defendant in this cause, and am familiar with the transcript of record herein and all proceedings so far had; that on the 26th day of November, 1907, final judgment was entered herein, enjoining the defendant, as

therein stated; that an appeal was taken by the 31
defendant from said decision to the Circuit Court
of Appeals, and such injunction was modified, as
stated in the opinion handed down by the Circuit
Court of Appeals on such appeal, and was other-
wise affirmed. That subsequently the mandate of
the Circuit Court of Appeals was filed in this Court,
and an order was entered herein on the 1st day of
November, 1908, making the judgment of the Cir-
cuit Court of Appeals the judgment of this Court,
and ordering and decreeing that a writ of perpetual
injunction issue in conformity with the decree as
above modified, and that the issuance of the said
new decree or writ of injunction should operate to 32
vacate the one originally issued; that the said final
injunction was issued and served; that an appeal
was taken by the complainant from said decision
of the Circuit Court of Appeals to the Supreme
Court of the United States, and that a motion was
made to dismiss said appeal. That complainant
thereupon made and filed his petition for a writ of
certiorari, and that a cross-petition for a writ of
certiorari was filed by the defendant. That all
these various motions came on to be heard together
before the Supreme Court, and that on the nine-
teenth day of April, 1909, an order was made herein
by the Supreme Court of the United States, grant- 33
ing the petition for the writ of certiorari and the
cross-petition, and ordering that the record filed in
said court on the appeal should be taken as a re-
turn to the said writs.

That deponent respectfully states that in vir-
tue of all these proceedings, this Court has no
jurisdiction to make any order in the premises, ex-
cept for the purpose of enforcing the decree here-
inbefore made by proper contempt proceedings, in
case of violation thereof by the defendant.

That this application is for the purpose of ob-
taining an entirely different relief not asked for

in the original bill; that it is based on the assumption that the use of the words "Peres Chartreux" would be apt to make the public believe that the goods sold by the defendant are the goods which are now manufactured by the complainants in their factory in Tarragona, under their new label; that the bill on the other hand is based on an alleged attempt by the defendant to have its goods passed for the goods formerly manufactured by the defendant in France under the old label; that either the use of the word sought to be enjoined in this application is embraced within the decree as entered, and that in that case the proper remedy would be an application to punish for contempt, or that it is not embraced within it, and that in that case a new bill should be filed, under which testimony could be taken, and the matter could be decided according to the usual and proper practice in equity.

That as far as the merits of the application are concerned, deponent wishes to bring to the attention of the Court that in the decision of the Circuit Court of Appeals it was expressly stated that the Court did not wish in any way to limit the defendant to the use of the labels suggested by the Court, and that it was further stated that defendant would have the right to use the labels suggested by the Court in any language it might deem proper. When this decision was handed down, the counsel for the complainants addressed a communication to the Circuit Court of Appeals, asking it to modify its opinion and decision, and objecting particularly to the use of the words "Carthusian Monks," at the bottom of the label, stating particularly that owing to the use of such words "an ordinary purchaser, if not thoroughly versed in the events resulting from the French Association Act, would quite naturally suppose defendant's product to be in some way connected with the 'Carthusian Monks.'"

That in answer to this letter a communication was addressed to complainant's counsel by Hon. Alfred C. Coxe, refusing to modify the opinion and the decree, and stating that "we think that no one can be deceived by either label suggested by us, unless his mental powers have been hopelessly impaired." That in such letter of counsel it was never suggested that the use of the words "Liquidator of the property of the Carthusian Monks" was an improper description of the position held by Mr. Lecouturier, and that he should be described as "Liquidator of the property of the Congregation of the Chartreux." That an inspection of the record will show that no distinction was made between these terms by the witnesses, and it is admitted in the Scott affidavit that such terms are practically synonymous, and the only objection is that use is made of the term "Peres Chartreux," instead of "Carthusian Monks." That an inspection of the record will show that by all the witnesses of the complainants, and amongst others the Prior of the complainants himself, the words "Carthusian Monks" and "Carthusian Fathers" are used indiscriminately. 37 38

Deponent particularly calls the attention of the Court to the testimony of Mr. Dubonnet and of Father Baglin (page 168). It is difficult to see how the complainants herein can raise this point when in their own bill (paragraph I) they describe the complainants as "said Order of Carthusian Monks of the Convent La Grande Chartreuse, generally known as Peres Chartreux (Chartreuse Fathers)," when they further speak of the "skill and care exercised by the said Peres Chartreux," when in the second paragraph they speak of the "Order of Carthusian Monks, known as *Peres Chartreux*," and when in the third paragraph they speak of the "Order of Peres Chartreux," an expression reiterated in the seventh paragraph. If "Or- 39

40 der of Carthusian Monks" is equal to "Order of Peres Chartreux," then "Carthusian Monks" is equal to "Peres Chartreux." This is not a legal, but simply a mathematical proposition.

Deponent called the attention of Mr. Scott to these facts in the correspondence referred to in the Scott affidavit, and stated that for that reason he did not feel at liberty to advise his clients to change the form of the label. At that time deponent had not noticed that the form of the decree entered herein was an additional argument to sustain the views herein expressed. In that decree and in the injunction which was entered, this Court adjudi-
41 cates that the ownership of the trade-mark "Chartreuse" is in the complainants, and describes the complainants as "Carthusian Monks or Fathers (Peres Chartreux)."

This is a clear adjudication that the words "Carthusian Monks" and "Peres Chartreux" are synonymous, and therefore, if the relief prayed for in this application should be granted, and defendant should be enjoined from using the word "Peres Chartreux," or any "synonymous expression," it could not use the words "Carthusian Monks," notwithstanding that it has been given expressly the right to use these words by the Circuit Court of
42 Appeals. An application which would lead logically to such an absurd result cannot be seriously considered.

A. L. PINCOFFS.

Sworn to, before me, this 11th day of August, 1909.

E. M. CARROLL,
[SEAL] Notary Public,
New York County.

(Endorsed)—Copy received 8/11/09. Ralph L. Scott, of Counsel for Complt.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 11, 1909.—John A. Shields, Clerk.

Opinion of the Court.

The defendants have varied the suggestion of the Circuit Court of Appeals. This was their right. The material inquiry is whether they have violated the decree on mandate, which is the original decree excepting as to Paragraph IV.

A fair interpretation of the decree is that defendants may tell what they make, providing they tell the truth about it on their labels, etc.

Are they telling the truth when they speak of the "Liquidator of the PERES CHARTREUX." In my opinion they are not strictly accurate, as matter of law, on the evidence of the French witnesses.

M. Lecouturier was not such Liquidator—but was entrusted with the property of the Congregation or Order, of which the Fathers were the religious portion only.

This verbal inaccuracy seems to me, however, of small moment. The true question is does the label assert or suggest a falsehood. I think it does. Why should French and English be mingled in the part complained of? Why cannot the words "Carthusian Monks" (a fair English equivalent for Peres Chartreux) be used?

Evidently because the ordinary customer is accustomed to the words "Peres Chartreux" on his bottle; he knows no French, but he looks for these words, and if he does not find them he is disquieted—even though he finds the more familiar "Chartreuse" twice repeated.

The form of the motion is objectionable. There is power to punish for contempt in this Court, but not to vary or add to a decree now on appeal to the United States Supreme Court.

An order may be entered on these papers adjudging that defendant is in contempt and fining it $100.00, one-half to use of complainant and one-half to use of U. S.

46 This will enable defendant to submit the matter to the Circuit Court of Appeals.

C. M. HOUGH.

Aug. 14, 1909.

At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the Court Rooms thereof in the Post Office Building, Borough of Manhattan, City of New York, this 21st day of August, 1909.

47

Present—Hon. CHARLES M. HOUGH,
U. S. Judge.

DERE ALFREDO LUIS BAGLIN, etc.,

vs.

CUSENIER COMPANY.

48 This cause coming on further to be heard upon the Scott Affidavit (verified herein July 29, 1909), and the Pincoffs affidavit (verified herein August 11, 1909), and R. L. Scott, Esq., being heard for complainants, and A. L. Pincoffs, Esq., for defendant, and the Court being advised in the premises, and on August 14, 1909, having handed down a written decision, now, on motion of complainants' counsel and in pursuance of said decision, it is this day ordered as follows:

1. Defendant has been guilty of violation of the injunction in making use, upon liqueur or cordial not manufactured by complainants, of the label re-

ferred to in the said Scott affidavit, by reason of the 49
use of the words "Made in France by the Cie. Fermiere de la Grande Chartreuse Successor to the Liquidator of the Property of the Peres Chartreux."

2. Defendants is fined One Hundred Dollars ($100.00) for said contempt, for such violation of the injunction, one-half to the United States and one-half to complainants, the same to be paid within ten days from the date of said decision, to wit, on or before August 24, 1909; and if not paid within that time let execution issue therefor.

50

3. If within said time defendant takes its appeal from this order, and if defendant at the same time file a bond of good and sufficient surety for the payment of said fine and the costs of appeal, and if defendant diligently prosecute its said appeal and promptly move for a preference,—in such event the payment of said fine will be suspended until decision by the Court of Appeals upon such appeal, and the entry of an order thereon.

C. M. HOUGH,
U. S. Judge.

(Endorsed)—Due and timely service of a copy of 51
the within order is hereby admitted this 16th day of Aug., 1909. A. J. Pincoffs.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 23, 1909.—John A. Shields, Clerk.

52 IN THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN vs. CUSENIER.	In Equity No. 8949.

53

Petition for Appeal.

The above named defendant conceiving itself aggrieved by the order entered on the 23rd day of August, 1909, in the above entitled cause, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith and said defendant prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated may be sent to the United States Circuit
54 Court of Appeals for the Second Circuit.

Dated, New York, August 23rd, 1909.

A. L. PINCOFFS,
Of Counsel for Defendant.

The foregoing claim of appeal is allowed.

C. M. HOUGH,
District Judge.

(Endorsed)—Due personal service of a copy of the within petition for appeal is hereby acknowledged on behalf of the appellee, Pere Baglin,

for himself and the other members of the Order, this 27th day of August, 1909, C. A. L. Massie, of Counsel for Baglin, *et al.*, Complts.-Appellees.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 24, 1909.—John A. Shields, Clerk. 55

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

56

CUSENIER,
Plaintiff in Error,

vs.

BAGLIN,
Defendant in Error.

Assignment of Errors.

And now comes said Plaintiff in Error by Adolph L. Pincoffs, of counsel, and having obtained a writ of error to the United States Circuit Court of Appeals for the Second Circuit from the order of said Circuit Court entered on the 23rd day of August, 1909, adjudging the plaintiff in error in contempt and imposing a fine upon it, respectfully represents as an assignment of errors herein that said Circuit Court has erred in the following particulars: 57

1. In not denying the motion for an injunction and refusing to punish plaintiff in error for a contempt when no such relief was asked for or suggested in the moving papers.

58 2. In holding that the use of the words "Peres Chartreux" by plaintiff in error on the label used on liqueur not manufactured by the defendants set out in defendant's moving papers herein, was in itself, a violation of the injunction issued herein on the first day of November, 1908.

3. In holding that the use of such words constituted or asserted or suggested a falsehood or would mislead a purchaser.

4. In not holding that the use of such words was not, in itself, a violation of such injunction and did not constitute or assert or suggest a falsehood, or
59 would not mislead a purchaser.

5. In not holding that the use of such words in such a manner is expressly authorized by the Mandate of the Circuit Court of Appeals herein.

6. In fining the plaintiff in error for such alleged contempt.

WHEREFORE, the plaintiff in error prays that said order may be reversed.

A. L. PINCOFFS,
Of Counsel for Plaintiff in Error.

60 August 25th, 1909.

(Endorsed)—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 27, 1909.—John A. Shields, Clerk.

NOTE.—A similar assignment of errors was filed in connection with the appeal on the 24th day of August, 1909.

UNITED STATES CIRCUIT COURT OF APPEALS, 61

FOR THE SECOND CIRCUIT.

CUSENIER COMPANY,
Plaintiff in Error,

AGAINST

PERE ALFREDO LUIS BAGLIN,
etc.,
Defendant in Error. 62

KNOW ALL MEN BY THESE PRESENTS: That we, Cusenier Company, as principal, and the Illinois Surety Company, a corporation organized and existing under the Laws of the State of Illinois, and having an office at 5 Nassau Street, in the Borough of Manhattan, City of New York, as surety, are held and firmly bound unto Pere Alfredo Luis Baglin, Superior General of the Order of Carthusian Monks, for himself, and all of the other Members of said order, in the sum of Three Hundred Fifty Dollars ($350.) for the payment of 63 which well and truly to be made we bind ourselves, our successors and assigns, firmly by these presents.

SEALED with our seals and dated this 27th day of August, 1909.

WHEREAS, the above-named Cusenier Company has obtained a writ of error to the United States Circuit Court of Appeals for the Second Circuit to reverse an order made in the above-entitled suit by a Judge of the Circuit Court of the United

64 States for the Southern District of New York, imposing a fine of One Hundred Dollars ($100.00) for a violation of an injunction issued in the above-entitled suit.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Cusenier Company shall prosecute the said writ of error to effect and answer all damages and costs and payment of the aforesaid fine if it fails to make its plea good, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

CUSENIER COMPANY,
By J. E. R. KUNZMAN,
65 Res. Vice President.

ILLINOIS SURETY COMPANY,
[SEAL.] By WIGHT V. ABBOTT,
Attorney in Fact.

CITY AND COUNTY OF NEW YORK, }
State of New York, } ss.:

On the 27th day of August, 1909, before me personally came WIGHT V. ABBOTT, to me known, who, being duly sworn, did depose and say that he resides in the City of New York; that he is an attorney-in-fact of the Illinois Surety Company, the corporation described in and which exe-
66 cuted the within instrument; that he knew the seal of said corporation; that the seal attached to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided by law.

SWORN to before me the day and year first above written.

JOSEPH E. R. KUNZMANN,
Commissioner of Deeds for the City of New York, residing in the Borough of Brooklyn.

[SEAL.]

POWER OF ATTORNEY FROM ILLINOIS SURETY COMPANY TO D. CLINTON MACKEY AND WIGHT V. ABBOTT, OR EITHER OF THEM. 67

KNOW ALL MEN BY THESE PRESENTS: That the Illinois Surety Company, a corporation duly incorporated under the laws of the State of Illinois, and duly authorized to act as sole surety, in pursuance of the following resolution, which was passed by the Board of Directors of the Company at a meeting held March 25, A. D. 1907, to wit:

"RESOLVED, that the President, Vice-President or an Acting-President is hereby authorized, empowered and directed to make and appoint such agents and to execute such Powers of Attorney to accept process for and on behalf of this Company, or to authorize the said attorneys and agents to execute Bonds, undertakings or writings obligatory in the nature thereof, for and on behalf of this Company, as shall be needful, and to the same extent and effect as though said appointments were severally made by separate action of the Board of Directors in each instance, and the Secretary or Assistant Secretary is hereby authorized, empowered and directed to authenticate such appointments, affixing the corporate seal of the Company to the same" 68 69

has made, constituted and appointed, and by these presents doth make, constitute and appoint D. Clinton Mackey and Wight V. Abbott, of the City, County and State of New York, or either of them, its true and lawful attorneys-in-fact, with full power and authority to sign, seal, acknowledge and deliver in its name, place and stead, as surety, Bonds, undertakings or writings obligatory in the nature thereof, and when such Bonds, undertak-

70 ings or writings obligatory are signed by the said D. Clinton Mackey and Wight V. Abbott, or either of them, as attorneys-in-fact, to bind the Company as fully and to the same extent as if said Bonds, undertakings or writings obligatory in the nature thereof were executed by the Executive Officers of this Company, at its Home Office in the City of Chicago, State of Illinois, and the Company hereby ratifies and confirms all that its said attorneys-in-fact may do or lawfully cause to be done in the premises by virtue of these presents.

IN TESTIMONY WHEREOF, the Illinois Surety Com-
71 pany has caused these presents to be signed by its Acting President, attested by its Secretary and its corporate seal to be hereunto affixed, this 15th day of January, A. D. 1909.

ILLINOIS SURETY COMPANY,

[SEAL.] By JAMES S. HOPKINS,
Acting President.

Attest:

H. W. WATKINS,
Secretary.

I, MARSHALL A. DUNNING, Asst. Secretary of the Illinois Surety Company, hereby certify that the
72 above Power of Attorney is a true copy of the original records of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said corporation, this 17th day of May, 1909, at Chicago, Illinois.

MARSHALL A. DUNNING,
Asst. Secretary.

STATEMENT OF FINANCIAL CONDITION OF ILLINOIS SURETY COMPANY. 73

At the close of business, March 31, 1909.

ASSETS.

Stocks and Bonds	$427,060.93	
Accrued Interest	4,104.54	
Bills Receivable, secured by collateral	3,844.73	
Outstanding Premiums ..	46,256.12	
Cash in Office and Depositories 74	47,972.07	
		$529,238.39

LIABILITIES.

Capital Stock	$250,000.00	
Surplus	50,000.00	
Collateral Deposits	4,363.21	
Reserve for Unadjusted Losses	19,498.39	
Due for Re-Insurance ...	5,365.57	
Commissions Accrued, not due	12,058.48	
Reserve for Re-Insurance	123,201.35	
Undivided Profits	64,751.39	
		$529,238.39 75

CITY AND COUNTY OF NEW YORK, } ss.:
State of New York, }

I, WIGHT V. ABBOTT, Attorney-in-Fact of the Illinois Surety Company, do hereby certify that the foregoing is a true and correct copy of the statement of assets and liabilities of the said Company at the close of business, March 31, 1909.

76 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Company, this 27th day of August, 1909.

WIGHT V. ABBOTT,
[SEAL.] Attorney-in-Fact.

Subscribed and sworn to before me this 27th day of August, 1909.

JOSEPH E. R. KUNZMANN,
Commissioner of Deeds for the City of New York,
[SEAL.] Residing in the Borough of Brooklyn.

77 Due personal service of a copy of the within Bond is hereby acknowledged on behalf of the appellee, Pere Baglin, for himself and the other members of the Order, this 31st day of August, 1909.

C. A. L. MASSIE,
Attorney for Defendant-in-Error.

Approved as to form and also as to sufficiency of sureties with reservation, however, to the Deft. in Error, of the right at any time to examine the proper officers of the Surety Company under oath, touching its assets, liabilities and financial condition generally. C. M.
78 Hough, U. S. Dist. Judge.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 28, 1909.—John A. Shields, Clerk.

NOTE.—A similar Bond was filed in connection with the appeal on the 24th day of August, 1909.

By the Honorable Charles M. Hough, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, to Pere Alfredo Luis Baglin, Procureur of the Order of the Carthusian Monks' Convent la Grande Chartreuse, for himself and all of the other Members of the said Order, Greeting: 79

You are hereby cited and admonished to be and appear before a United State Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 22nd day of September, 1909, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Cusenier Company is plaintiff in error and appellant, and you are defendant in error and appellee to show cause, if any there be, why the order in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf. 80

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 26th day of August, in the year of our Lord one thousand nine hundred and nine, and of the Independence of these United States the one hundred and thirty-third. 81

C. M. Hough,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Due personal service of this citation is hereby acknowledged on behalf of the appellee, Pere Bag-

82 lin, for himself and the other members of the Order, this 27th day of August, 1909.

C. A. L. MASSIE,
Of Counsel for Baglin et al Defdts-in-error.

(Endorsed)—United States Circuit Court of Appeals for the Second Circuit.—Cusenier Company, Plaintiff in Error *vs.* Pere Baglin, etc., Defendant in Error.—Citation.—Adolph L. Pincoffs, of Counsel for Plaintiff in Error, office and Post Office address, 120 Broadway, Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District, N. Y.—Filed
83 Aug. 28, 1909.—John A. Shields, Clerk.

BY THE HONORABLE CHARLES M. HOUGH, ONE OF THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT TO PERE ALFREDO LUIS BAGLIN, PROCUREUR OF THE ORDER OF THE CARTHUSIAN MONKS CONVENT LA GRANDE CHARTREUSE, FOR HIMSELF AND ALL OF THE OTHER MEMBERS OF THE SAID ORDER, GREETING:

84 You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 22nd day of Sept., 1909, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Cusenier Company is appellant, and you are appellee, to show cause, if any there be, why the order in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 24 day of August, 1909, in the year of our Lord one thousand nine hundred and nine, and of the Independence of these United States the one hundred and thirty-third. 85

C. M. HOUGH,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Due personal service of .this citation is hereby asknowledged on behalf of the appellee, Pere Baglin, for himself and the other members of the Order, this 27 day of August, 1909. 86

C. A. L. MASSIE,
Of Counsel for Baglin *et al.*
(Complts.—Appellees).

(Endorsed)—Circuit Court of the United States for the Southern District of New York.—Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, etc., *vs.* Cusenier Company.—Citation.—Adolph L. Pincoffs, of Counsel for Defendant, office and Post Office address, 120 Broadway, Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 28, 1909. —John A. Shields, Clerk. 87

88 UNITED STATES OF AMERICA, }
Southern District of New York. } ss:

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to 33 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Pere Alfredo Louis Baglin, Procureur of the Order of the Carthusian Monks Convent la Grande Chartreuse, Complt.-Appellee, against Cusenier Company, Defendant-Appellant, as the same remain of record
89 and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of October, in the year of our Lord One Thousand Nine Hundred and Nine, and of the Independence of the said United States the One Hundred and Thirty-fourth.

JOHN A. SHIELDS,
[SEAL.] Clerk.

90

United States Circuit Court of Appeals for the Second Circuit.

No. 205, October Term, 1909.

Argued November 8, 1909; Decided November 8, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General, etc., Complainant-Appellee and Defendant-in-Error,

vs.

THE CUSENIER COMPANY, Defendant-Appellant and Plaintiff-in-Error.

Appeal from and Writ of Error to the Circuit Court of the United States for the Southern District of New York.

Before Lacombe, Coxe, and Ward, Circuit Judges.

We are satisfied it was error to hold defendant in contempt for translating the whole or any part of the label which the court said it might use, the court having expressly stated that such label might be translated into any language. No mistranslation is proved.

Order reversed.

A. L. Pincoffs, for Plaintiff-in-Error and Appellant.
Ralph L. Scott, for Defendant-in-Error and Appellee.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building, in the City of New York, on the 18th Day of November, One Thousand Nine Hundred and Nine.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Circuit Judges

PERE ALFREDO LUIS BAGLIN, Superior-General, etc., Complainant-Appellee and Defendant-in-Error,

vs.

THE CUSENIER COMPANY, Defendant-Appellant and Plaintiff-in-Error.

Appeal from and Error to the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said Circuit Court be and it hereby is reversed with costs.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.
A. C. C.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Pere Alfredo Baglin vs. Cusenier Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 18, 1909. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 33 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Pere Alfredo Luis Baglin, Superior-General, etc., Complainant-Appellee, and Defendant in Error, against The Cusenier Company, Defendant-Appellant, and Plaintiff in Error, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 17th day of December in the year of our Lord One Thousand Nine Hundred and Nine and of the Independence of the said United States the One Hundred and thirty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

The law of a foreign country has no extra-territorial effect to detach a trade-mark validly registered in this country from the product to which it is attached.

Non-user of a trade-mark, or the use of new devices, does not afford a basis for the penalty of loss of right thereto by abandonment; abandonment will not be inferred in the absence of intent, and a finding of intent must be supported by adequate facts.

While one may use the name of the place where he manufactures an article, in order to show where it is manufactured, and may state all the facts in regard to his succession, under the law of a foreign country, to property of parties formerly manufacturing an article similar in many respects, he cannot, in this country, use the name of the place to designate the article if that name has been validly registered as a trade-mark here; and so *held* that the liquidator appointed in France of the property of the Carthusian Monks could not, in this country, use the word "Chartreuse" to designate the liqueur manufactured by him at Grande Chartreuse, the Carthusian Monks having validly registered that name in the United States as a trade-mark of the liqueur manufactured by them.

A validly registered trade-mark cannot be used by anyone other than the owner, even with words explaining that the article to which it is attached is not manufactured by the owner of the trade-mark.

Where the Circuit Court has sustained the trade-mark but the Circuit Court of Appeals has suggested a form of label that the defendant might use, defendant should not be punished for contempt for using such a form.

THE facts, which involve the validity of the word "Chartreuse" as a trade-mark and other questions in regard to the ownership thereof and the sale of cordials under that name, are stated in the opinion.

Mr. Philip Mauro, with whom *Mr. C. A. L. Massie* and *Mr. Ralph L. Scott* were on the brief, for appellants and petitioners:

The office of a trade-mark is to guarantee the origin of an article with which it has become identified in the public mind. *Medicine Co.* v. *Wood*, 108 U. S. 218, 223.

Defendant's use of the "Chartreuse" trade-mark vio-

lates the fundamental law of trade-marks. Defendant's liqueur is of recent origin, its formula having been devised in 1904. Defendant's business is not a continuation of complainants' business.

The French court at Grenoble has decided that the product sold by defendant is not genuine Chartreuse. There can be no dispute between the parties hereto as to the validity of the trade-mark "Chartreuse." That word does constitute a valid trade-mark as applied to liqueurs, cordials, etc. See *Falk* v. *Trading Co.*, 180 N. Y. 445, 451; *Grezier* v. *Girard*, decided April 13, 1876; *A. Bauer & Co.* v. *Order of Carthusian Monks*, 120 Fed. Rep. 78; and see also Judgment of the English House of Lords.

The significance of the word "Chartreuse" is not geographical alone; but even if it were, geographical names may constitute lawful trade-names under some circumstances. *Wotherspoon* v. *Currie*, L. R. 5 H. L. 508; *Lawrence Co.* v. *Tenn. Mfg. Co.*, 138 U. S. 537, 550; *Scriven* v. *North*, 134 Fed. Rep. 366, 377; *Thompson* v. *Montgomery*, 41 Ch. D. 35, 50; *"Stone Ale" Case*, and *Reddaway* v. *Banham*, 1 Q. B. 286; *"Camel Hair Belting" Case; Shaver* v. *Heller & Merz Co.*, 108 Fed. Rep. 821; *Buzby* v. *Davis*, 150 Fed. Rep. 275; *Pillsbury* v. *Mills Co.*, 24 U. S. App. 395; *S. C.*, 12 C. C. A. 432, and 64 Fed. Rep. 841; *Kathreiner's Malzkaffee Fab.* v. *Pastor Kneipp Med. Co.*, 82 Fed. Rep. 321, 324; *Siegert* v. *Gandolfi*, 149 Fed. Rep. 100; *S. C.*, 79 C. C. A. 142; *Bauer* v. *Siegert*, 120 Fed. Rep. 81.

The property involved in this suit is the good-will of the business which has come into existence in this country, being the outgrowth of transactions, extending over many years, between complainants and the American public. It was one of the objects of the French law of 1901 to confiscate this American business, and even if such were one of the objects of that law said business is not subject to the jurisdiction of the French laws and tribunals.

For definition of "good-will" see *Washburn* v. *Wall Paper Co.*, 81 Fed. Rep. 17, 20.

The Monks owned the business in question during all the centuries they manufactured liqueurs in France, and had at any time the right to move their base of operations from one place to another. The right to transfer a business from place to place is an incident of ownership.

The attempt of the liquidator to exercise ownership over the foreign trade-marks has been disapproved by the French courts. The French law of 1901, and the decrees of the French courts give no color of authority to defendant to use the trade-marks of complainants in the United States.

The new labels employed by complainants do not in any way amount to an abandonment of the old trade-name and trade-marks.

Mr. A. L. Pincoffs, with whom *Mr. Roger Foster* was on the brief, for appellees and cross-petitioners:

The bill cannot be maintained as a bill to enjoin infringements by the complainant of a trade-mark, as the primary meaning of the word "Chartreuse" is geographical and no use of the word as its trade-mark by defendant is proved. *Elgin Co.* v. *Illinois Watch Co.*, 179 U. S. 665, 667; *Ex parte Farmer Co.*, 18 Off. Gaz. 412; *Pillsbury Co.* v. *Eagle Co.*, 86 Fed. Rep. 608; *Waltham Watch Co.* v. *U. S. Watch Co.*, 173 Massachusetts, 85; *Wolf* v. *Goulard*, 18 How. Pr. 64, 66, 67; *Lea* v. *Wolf*, 46 How. Pr. 157, 158; Browne on Trade-marks, 2d ed., § 182, p. 193; *Durham Smoking Tobacco Case*, 3 Hughes, 111, 167.

There was no business or good-will vested in complainants in this country separate and apart from the business and good-will in France. *Knoedler* v. *Boussod*, 47 Fed. Rep. 465.

The disputed marks and the phrase "Chartreuse," as applied to a liqueur, are primarily significant of place of

manufacture; the complainants have failed to prove that they have acquired a secondary meaning and refer merely to the fact that the article is of their manufacture. *Wotherspoon* v. *Currie*, L. R. 5 H. L. 508; *Thompson* v. *Montgomery*, L. R. 41 Ch. Div. 35; *Bauer* v. *Carthusian Monks*, 120 Fed. Rep. 78.

Complainants cannot maintain this suit, because the marks which they seek to enjoin defendant from using cannot be used by themselves. *Atlantic Milling Co.* v. *Robinson*, 20 Fed. Rep. 218; *Dixon Crucible Co.* v. *Guggenheim*, 3 Am. L. T. 228; *Hudson* v. *Osborne*, 39 L. J. Ch. (N. S.) 79; *Shipwright* v. *Clements*, 19 W. R. 599; *Hall* v. *Barrows*, 4 DeG., J. & S. 150; *Monson* v. *Boehm*, L. R. 26 Ch. Div. 398, 405.

Those who do not in any sense succeed to the business cannot claim the trade-mark. There is no such thing as a trade-mark in gross. It must be appendant to some particular business. *Weston* v. *Ketcham*, 51 How. Pr. 455; *Kidd* v. *Johnson*, 100 U. S. 617.

The complainants have failed to prove that this defendant falsely represents that the liqueur sold by it is made in accordance with any recipe of complainants, or that it is guilty of any misrepresentation in stating that its liqueur is identical with that formerly made by the Monks. *Hostetter* v. *Hungerford*, 97 Fed. Rep. 585.

As the product formerly manufactured by the Monks owed its reputation to its quality, due to certain advantages inseparably connected with the place of manufacture, defendant's principal, who, by decree of a competent French court, has been directed and authorized to carry on such business at the identical place under similar conditions, and who, owing to the advantages so enjoyed by him, has succeeded in making the identical article, has the right to the good-will attached to such business and to use the trade-name and labels connected with it.

Trade-marks or trade-names may be assigned with the

business to which they appertain, and will go with an assignment of the good-will of that business, either voluntarily or by operation of law. *Kidd* v. *Johnson*, 100 U. S. 617; *Menendez* v. *Holt*, 128 U. S. 514; *Chemical Co.* v. *Meyer*, 139 U. S. 547; *Warren* v. *Thread Co.*, 134 Massachusetts, 247; *Nervine Co.* v. *Richmond*, 159 U. S. 302.

The good-will of a business including the right to use trade-marks, even where these consist of the names of individuals engaged in the business, and of a picture representing such name, pass with a transfer of all the property and assets of the business, although not specifically mentioned. *Fish Bros. Wagon Co.* v. *Titus G. Fish et al.*, 82 Wisconsin, 546; *Sarrazin* v. *Irby Segar & Tobacco Co.*, 93 Fed. Rep. 624; *Nervine Co.* v. *Richmond*, 159 U. S. 293; *Peck Bros. & Co.* v. *Peck Bros.*, 113 Fed. Rep. 291; *Chemical Co.* v. *Meyer, supra; LePage Co.* v. *Russia Cement Co.*, 51 Fed. Rep. 941.

The correctness of the French judgments appointing defendant's principal are not open to question here. They are of the nature of a judgment *in rem.* Black on Judgments, 2d ed., § 79; *Windsor* v. *McVeigh*, 93 U. S. 274; *Kreiss* v. *Faron*, 118 California, 142; *Whitney* v. *Walsh*, 1 Cush. 29.

When a court of competent jurisdiction and by proceedings directed specifically against things within its jurisdiction, acts on such things, its judgment, if the procedure be regular, is everywhere binding. Wharton, Conflict of Laws, 3d ed., 665, 666; *Castrique* v. *Imrie*, L. R. 4 H. L. 428; *Magoun* v. *New Eng. Co.*, 1 Story, 157; *Peters* v. *Warren Ins. Co.*, 14 Pet. 99; *Hudson* v. *Guestier*, 4 Cranch, 293; *Williams* v. *Armroyd*, 7 Cranch, 423; *Whitney* v. *Walsh*, 1 Cush. 29; Black, Judgments, § 813; *Monroe* v. *Douglas*, 4 Sandf. Ch. 126, 183; *Hilton* v. *Guyot*, 159 U. S. 167.

This court cannot enter into an inquiry as to whether the French courts proceeded correctly as to their own law.

Black on Judgments, 581–9; *Castrique* v. *Imrie*, L. R. 4 H. L. 428; *Williams* v. *Armroyd*, 7 Cranch, 423.

Even if the word "Chartreuse" and the labels ever had the secondary meaning claimed by the complainants, the evidence in this case shows that they have lost such meaning, and that both the word "Chartreuse" and the labels indicate to the American public exclusively the article manufactured by the defendant's principal. *Hilreth* v. *McDonald*, 164 Massachusetts, 16; *Singer Co.* v. *Wilson*, 2 Ch. Div. 447; *Van Camp Co.* v. *Cruikshanks Co.*, 90 Fed. Rep. 814; *Von Muenser* v. *Wittenran*, 85 Fed. Rep. 966; *S. C.*, 91 Fed. Rep. 126.

The provisions of our trade-mark treaties and our own existing registration statute support defendant's contention here.

MR. JUSTICE HUGHES delivered the opinion of the court.

Père Baglin, Superior General of the Order of Carthusian Monks, for himself and the other members of the Order, brought this bill in equity against the Cusenier Company, a New York corporation, to restrain the infringement of trade-marks and unfair competition.

The complainant had a decree in the Circuit Court, and this was modified in certain particulars, to which we shall presently refer, by the Circuit Court of Appeals. The complainant then appealed to this court and motion was made to dismiss the appeal, it being urged that the decree below was not final. Complainant then petitioned for a writ of certiorari, and this writ and a cross-writ asked for by the respondent were granted.

The facts, so far as we deem it necessary to state them, are as follows: For several hundred years prior to 1903—save for a comparatively brief period following the French Revolution—the Order of Carthusian Monks occupied the Monastery of the Grande Chartreuse, near Voiron, in the Department of Isere, in France. This was their

Mother House. There, by a secret process, they made the liqueur or cordial which, at first sold locally, became upwards of fifty years ago the subject of an extensive trade and is known throughout the world as "Chartreuse." The Monks originally manufactured the liqueur at the Monastery itself and later at Fourvoirie, close by. It was marketed, here and abroad, in bottles of distinctive shape, to which were attached labels bearing the inscription, "Liqueur Fabriquée â la Gde. Chartreuse," with a facsimile of the signature of L. Garnier, a former Procureur of the Order, and its insignia, a globe, cross and seven stars; and these symbols with "Gde. Chartreuse" underneath were also ground into the glass. In 1876, the then Procureur registered two trade-marks in the Patent Office, and these were re-registered in 1884, under the act of 1881. In the accompanying statement the one was said to consist "of the word 'Chartreuse,' accompanied by a facsimile of the signature of L. Garnier," and the other "of the word-symbol 'Chartreuse;'" and the combinations in which these were used were described.

In the year 1903, having been refused authorization under the French law of July 1, 1901, known as the Associations Act, the congregation of the Chartreux was held to be dissolved by operation of law and possession was taken of their properties in France by a "sequestrating administrator and liquidator" appointed by the French court. Forcibly removed from their former establishment, and taking their secret with them, the Monks set up a factory at Tarragona, in Spain, and there according to their ancient process they have continued the manufacture of the liqueur, importing from France such herbs as were needed for the purpose.

The French liquidator, Henri Lecouturier, employing a skilled distiller and chemical assistants, undertook by experimentation to make at Fourvoirie a liqueur either identical with or resembling as closely as possible the

famous "Chartreuse;" and, having succeeded in this effort to his satisfaction, he placed his product upon the market under the old name. His agent in this country under date of October 25, 1904, issued a circular containing the following announcement:

"I take pleasure in informing you that I have been appointed Sole Agent for the United States and Canada for the Grande Chartreuse Liqueur. Within a few days I shall receive a shipment and therefore will be able to execute orders. As there is a very extensive demand for this cordial, I shall not be able to fill large orders in full, but I trust that, within a few weeks, I will have sufficient stock on hand to enable me to satisfy the demand through the Cusenier Company, whom I have appointed my distributing agents.

"Nothing has been changed in the putting up of the products of the Grande Chartreuse, which bear the same labels as heretofore, *the only guarantee of authenticity and of origin of the Chartreuse made at the Monastery.*"

The liquidator's cordial was shipped to this country, and sold here, in bottles of precisely the same description and with the same marks and symbols which had been used by the Monks; if there was any difference it is frankly stated to have been unintentional.

Meanwhile the Monks, debarred by the proceedings in France from the use of their old marks and symbols in that country, devised a new designation for their liqueur, in which prominence was given to the words "Pères Chartreux." The new label bore the inscription "Liqueur Fabriquée à Tarragone par les Pères Chartreux;" and this was accompanied by the statement that "this liqueur is the only one identically the same as that made at the Monastery of the Grande Chartreuse in France, previous to the expulsion of the Monks, who have kept intact the secret of its manufacture." To negative the claim of abandonment they made a small shipment to this country

under the old labels. And, both here and in other countries, the Monks have sought by legal proceedings to prevent the use of the word "Chartreuse" as a designation of the liqueur made at Fourvoirie since their expulsion, and the use or imitation by the liquidator or by those claiming under him of the marks which the Monks had associated with their product and the simulating in any way of the dress or packages in which it had been sold.

For this purpose, this suit was brought against the defendant, who was then representing the liquidator in this country. Pending it, the liquidator sold the property he had acquired and the business he had been conducting in that capacity to a company known as the "Compagnie Fermière de la Grande Chartreuse," which has continued the manufacture of liqueur at Fourvoirie and also its sale in this country through the defendant as its representative.

On final hearing the Circuit Court adjudged "that the word-symbol 'Chartreuse,' as applied to liqueur or cordial," and that "the said word-symbol 'Chartreuse' accompanied by the facsimile signature of L. Garnier," as set forth in the certificates of registry in the Patent Office, "constitute good and valid trade-marks, and in this country have been and now are the sole and exclusive property of said complainants, the Carthusian Monks or Fathers (Pères Chartreux); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants." It was further adjudged that the defendant had been guilty of infringement of these trade-marks and of unfair competition, and the decree also contained a perpetual injunction.

The Circuit Court of Appeals affirmed the decree with modifications which affect only the paragraph containing the injunction. This paragraph as amended reads as

BAGLIN, SUPERIOR GENERAL OF THE ORDER OF CARTHUSIAN MONKS, *v.* CUSENIER COMPANY.

APPEAL FROM AND ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 99. Argued March 14, 15, 1911.—Decided May 29, 1911.

While names which are merely geographical cannot be exclusively appropriated as trade-marks, a geographical name which for a long period has referred exclusively to a product made at the place and not to the place itself may properly be used as a trade-mark; and so *held* that the word "Chartreuse" as used by the Carthusian Monks in connection with the liqueur manufactured by them at Grande Chartreuse, France, before their removal to Spain, was a validly registered trade-mark in this country.

follows (the words inserted by the Court of Appeals being italicized):

"It is further adjudged, ordered and decreed that defendant, its associates, successors, assigns, officers, servants, clerks, agents, and workmen, and each of them be, and they hereby are perpetually enjoined from using in this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the trade-mark 'Chartreuse,' or of any colorable imitation thereof *unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants*—or the fac-simile signature of L. Garnier, or any colorable imitation thereof—or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise perpetually enjoined from importing or putting out or selling or offering for sale, directly or indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any [bottle or] label or [package] *symbol* like or substantially similar to *those appearing on* 'Complainants' Exhibit, Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court—and from in anywise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

The defendant contends that the Circuit Court was without jurisdiction. This objection must fail, as it sufficiently appears from the record that the controversy was between foreign subjects and a New York corporation. And there was also an assertion by the bill of a right under the Federal statute, by virtue of the registration of the trade-mark. *Warner* v. *Searle & Hereth Company*, 191 U. S. 195; *Standard Paint Company* v. *Trinidad Asphalt*

Company, 220 U. S. 446, decided April 10, 1911; *Jacobs* v. *Beecham*, decided May 15, 1911, *ante*, p. 263.

On the merits, the questions presented are (1) What rights, with respect to the designations and marks involved, were enjoyed by the Carthusian Monks prior to their expulsion from the French Monastery; (2) What effect upon their rights had (*a*) the liquidation proceedings in France, and (*b*) the conduct of the Monks in relation to the trade in the liqueur which they subsequently made in Spain; and, in the light of the conclusions upon these points, (3) To what remedy, if any, are the Monks entitled?

It is insisted that the judgment is erroneous in determining that "the word-symbol Chartreuse" constituted a valid trade-mark. It is argued that "Chartreuse" is a regional name; that the characteristic qualities of the liqueur were due to certain local advantages by reason of the herbs found and cultivated within the district described; that even as used in connection with the Monks' liqueur it was still a description of place; and hence, that at most, so far as this word is concerned, the question could be one only of unfair competition.

The validity of this argument cannot be admitted upon the facts which we deem to be established and controlling. It is undoubtedly true that names which are merely geographical cannot be the subject of exclusive appropriation as trade-marks. "Their nature is such that they cannot point to the origin (personal origin) or ownership of the articles of trade to which they may be applied. They point only at the place of production, not to the producer, and could they be appropriated exclusively, the appropriation would result in mischievous monopolies." *Canal Company* v. *Clark*, 13 Wall. p. 324. See also *Columbia Mill Company* v. *Alcorn*, 150 U. S. 460; *Elgin National Watch Company* v. *Illinois Watch Company*, 179 U. S. 665.

This familiar principle, however, is not applicable here. It is not necessary for us to determine the origin of the

name of the Order and its chief Monastery. If it be assumed that the Monks took their name from the region in France in which they settled in the Eleventh Century, it still remains true that it became peculiarly their designation. And the word "Chartreuse" as applied to the liqueur which for generations they made and sold cannot be regarded in a proper sense as a geographical name. It had exclusive reference to the fact that it was the liqueur made by the Carthusian Monks at their Monastery. So far as it embraced the notion of place, the description was not of a district, but of the Monastery of the Order—the abode of the Monks—and the term in its entirety pointed to production by the Monks.

It cannot be supposed that if, during the occupation by the Monks of the Monastery of La Grande Chartreuse, another had established a factory at Fourvoirie and there manufactured a liqueur, he could have affixed to it the name "Chartreuse" or "Grande Chartreuse" or "Gde. Chartreuse" on the ground that these were place names or descriptive of advantages pertaining to the locality. It could not fail to be recognized at once that these were the distinctive designations of the liqueur made by the Monks and not geographical descriptions available to any one who might make cordial in a given section of country. The same would have been true if the Monks had voluntarily removed and continued their manufacture elsewhere. As was forcibly said by the Lord Chief Justice in the Court of Appeal in *Rey* v. *Lecouturier*, [1908] 2 Ch. 715, p. 726: "To test this question, let us suppose that the monks had moved their manufacture to another monastery or another building in France and had sold the fabric of the distillery and left the district of La Grande Chartreuse, but had continued to make the liqueur in the same way; could it be contended that any one who bought as old bricks and mortar the distillery at Fourvoirie could immediately call any liqueur made there by the name of

Chartreuse, and put it on the English market under that name? It is to me quite unarguable."

The claim of the Monks to an exclusive right in this designation as applied to the liqueur has been frequently the subject of litigation and has repeatedly been sustained. In 1872, *La Cour de Cassation* in *Le Père Louis Garnier* v. *Paul Garnier*, 17 Annales, p. 259, held that "the word Chartreuse, applied as a denomination to the liqueur made by the religious community of which Père Garnier is the representative, is but an abbreviation and the equivalent of a designation more complete; for it at once indicates *the name of the fabricants* (the Chartreux); *the name or commercial firm of manufacture*, which is no other than the community of these same Chartreux, and finally *the place of manufacture*, that is to say the monastery of La Grande Chartreuse." It was concluded that the designation was the exclusive property of the Monks. Mr. Browne, after quoting the above passage, adds: "That single word" (Chartreuse) "contains a long history of strife. It has repeatedly been held to be a perfect trade-mark, for the reasons just cited." Browne on Trade-marks, § 582; §§ 407–410. See also 17 Annales, 241, 249; *Rey* v. *Lecouturier*, *supra*, p. 726; *Grezier* v. *Girard*, and others, United States Circuit Court, Southern District of New York, 1876, not reported; *A. Bauer* v. *Order of Carthusian Monks*, 120 Fed. Rep. 78.

We find no error, therefore, in this determination of the judgment. The registered trade-marks were valid. In the statements for registration, the symbols actually used in combination were set forth. Take, for example, the mark in the glass of the bottle, consisting of "Gde. Chartreuse" under the globe, cross and seven stars. This undoubtedly is a valid mark. And the same is true of the other marks, shown on the labels attached to the bottles, which included the ecclesiastical symbols and the facsimile of the signature of L. Garnier. It follows that up to the time

of their expulsion from the Monastery, the Monks were entitled to protection against the infringement of these marks, which were their exclusive property, as well as against unfair competition.

The next inquiry is with respect to the effect of the liquidation proceedings in France. Upon the application of the Procureur of the Republic, the French court proceeded to the judicial liquidation of the properties in France held by the non-authorized congregation of the Chartreux, and it was of these properties that a liquidator was appointed. It does not appear that the court assumed jurisdiction of the trade-marks registered on behalf of the Monks in other countries. On the contrary, it appears to have been held that the question of the ownership of such trade-marks was not involved in its determination. After a successful contest of the liquidator with the Abbe Rey, in which a judgment was pronounced to the effect that the latter was an interposed person or passive trustee under a deed of transfer found to be simulated, and that the properties claimed by him personally were in fact those of the congregation and subject to the liquidation, the liquidator sought by way of interpretation of this judgment to obtain a declaration that the assets of the liquidation comprised the trade-marks registered in other countries. On refusing the application (March 27, 1906), the Court of Appeals of Grenoble used the following language,—showing that the question had not been determined in the previous decision, and also directing attention to the character of the law under which the liquidation was had as "a law of exception and police:"

"The claim of the receiver to the property of the trade-marks registered in the foreign countries, raises the question whether the law of July first, nineteen hundred and one, which is a law of exception and police, controls or not, beyond the territory of the Republic, the properties of the dissolved Congregations, and whether the trade marks

registered in foreign lands are an accessory of the commercial holding of Fourvoirie, thus coming under this title into the liquidation, or whether they constitute a distinct and independent property from this commercial holding;

"The question has not been debated between the parties, and the court would not have failed, if it had been submitted to it, to treat upon it in the counts of its decision, in order to solve it in its disposition;

"The silence in this respect, exclusive of any debate on this point, does not allow of admitting, as being implicitly contained in the decree, in an ambiguous or equivocal form, the decision of which Lecouturier claims the benefit, and as the interpretation which he solicits from the court would have as effect to extend beyond what was its sole object, the matter judged by the decree of July nineteenth last;

"Such an application must be rejected as not receivable, and it is left to Lecouturier to have recourse to such means as may be deemed proper."

Hence defendant's contention is not that the French judgments, under which its principal claims, "expressly and directly settled the status of the marks abroad, but that the said judgments were effective to vest in the defendant [liquidator] the business and good will inseparably connected both in France and in this country with the place and mode of fabrication and, therefore, gave him the right, in virtue of the principles of our law, to use the trade-mark connected therewith."

Now what was the case with respect to the business to which the trade-marks in this country related? That business consisted of the manufacture by the Monks, according to their secret process of a liqueur of which the marks and symbols were the trade designation. They took their secret with them to Spain and continued the manufacture of the liqueur. The Monks' secret was not the subject of seizure by the liquidator and did not pass to him. It is not

pretended that he or his vendee have manufactured the liqueur at Fourvoirie under a formula or receipt derived from the Monks, but it is maintained that a formula believed to be essentially similar has been arrived at by experimentation, in accordance with which the liquidator and the French Company have been making their liqueur. We are not concerned with their authority under the French law to conduct this business, but it is not the business to which the trade-marks in this country relate. That business is being conducted according to the ancient process by the Monks themselves. The French law cannot be conceived to have any extra-territorial effect to detach the trade-marks in this country from the product of the Monks, which they are still manufacturing.

The matter was put thus by Lord Macnaghten in the House of Lords, in *Lecouturier* v. *Rey*, [1910] A. C. 262, p. 265:

"To me it seems perfectly plain that it must be beyond the power of any foreign Court or any foreign legislature to prevent the monks from availing themselves in England of the benefit of the reputation which the liqueurs of their manufacture have acquired here or to extend or communicate the benefit of that reputation to any rival or competitor in the English market. But it is certainly satisfactory to learn from the evidence of experts in French law that the law of Associations is a penal law—a law of police and order—and is not considered to have any extra-territorial effect. It is also satisfactory to find that these legal experts confirm the conclusion which any lawyer would draw from a perusal of the French judgments in evidence in this case, that the sale by the liquidator of the property bought by the appellant company has not carried with it the English trade-marks, or established the claim of the appellant company to represent their manufacture as the manufacture of the monks of La Grande Chartreuse, which most certainly it is not."

And Lord Justice Buckley said in the Court of Appeal (*Rey* v. *Lecouturier*), [1908] 2 Ch. 715, p. 733:

"Of course in this country a trade-mark can only be enjoyed in connection with a business, but I think that the monks are carrying on a business in connection with which they can enjoy any trade-marks to which they may be entitled, and the labels which were put upon the register, and in respect of which the defendant Lecouturier has had his own name placed upon the register. Are those trade-marks the property of the plaintiffs? In my opinion they clearly are."

If through his experiments the liquidator had not succeeded in making a liqueur which resembled that of the Monks, he would have had no business to transact so far as the liqueur was concerned and the transfer by operation of law would not have availed to give him one. But the property in the trade-marks in this country did not depend upon the success of the endeavors of the liquidator's experts. The Monks were enabled to continue their business because they still had the process, and continuing it they enjoyed all the rights pertaining to it, save to the extent to which, by force of the local law, they were deprived of that enjoyment in France.

Failing to establish that the Monks were divested of their exclusive rights in this country by the legal proceedings in France, it is insisted that these have been lost by abandonment. This defence is based both upon non-user of the old marks and labels and upon the efforts made by the Monks, since their expulsion from France, to associate their liqueur with a new designation—as the "Liqueur des Pères Chartreux" or "Liqueur Febriquée à Tarragone par les Pères Chartreux."

But the loss of the right of property in trade-marks upon the ground of abandonment is not to be viewed as a penalty either for non-user or for the creation and use of new devices. There must be found an *intent* to abandon, or the

property is not lost; and while, of course, as in other cases, intent may be inferred when the facts are shown, yet the facts must be adequate to support the finding. "To establish the defence of abandonment it is necessary to show not only acts indicating a practical abandonment, but an actual intent to abandon. Acts which unexplained would be sufficient to establish an abandonment may be answered by showing that there never was an intention to give up and relinquish the right claimed." *Saxlehner* v. *Eisner & Mendelson Company*, 179 U. S. 19, p. 31. And this court in referring in *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, p. 186, to the loss of the right of property in a name "like the right to an arbitrary mark" by dedication or abandonment, quoted with approval the definition of De Maragy, in his International Dictionary of Industrial Property as follows:

"Abandonment in industrial property is an act by which the public domain originally enters or reënters into the possession of the thing, (commercial name, mark or sign,) by the will of the legitimate owner. The essential condition to constitute abandonment is, that the one having a right should consent to the dispossession. Outside of this there can be no dedication of the right, because there cannot be abandonment in the juridical sense of the word."

What basis is there in this case for a finding of intent to abandon the old marks? It is to be remembered that they were of a personal character, involving the adaptation of the name and the use of the ecclesiastical symbols of the Order. It is pointed out that, to show that there was no intention to abandon, a shipment was made to this country from Tarragona, of the Monks' liqueur, under the old marks. But it is not necessary to rest on that. The attitude of the Monks in their efforts here and in other countries to prevent the use of the old marks shows clearly that there has been no intention to abandon.

It was natural enough that the Monks, unable to use their former marks in France, should desire to bring into use a designation which could be available there as well as in other countries. But this is far from indicating the slightest disposition to surrender to the world the right to denominate liqueurs by the ancient name and symbols taken from their own Order. As soon as the liquidator, as the result of his experiments, announced that he was prepared to put upon the market "the Grande Chartreuse Liqueur" under the same labels as theretofore,—"the only guarantee of authenticity and of origin of the Chartreuse made at the monastery,"—the Monks promptly asserted their rights.

The liquidator was not moved to the use of the marks in question by any consideration of abandonment on the part of the Monks, but by virtue of their exclusion from their former abode and of the rights of succession which he claimed under the French law. The main issue between the parties has been one of title, "each claiming a right to the disputed marks to the exclusion of the other." The respective parties, and those representing them, have been in constant litigation in France and elsewhere since the liquidator was appointed, and reviewing the facts in this case we find no possible ground upon which it can be said that the Monks have abandoned the rights they possessed.

We come then to the question of remedy.

In view of the acts of the defendant, with respect to the marks, labels, and bottles shown to have been used in connection with the liqueur made at Fourvoirie after the removal of the Monks, the decree adjudging it guilty of infringement and unfair competition was plainly right. We are also of the opinion that the provisions of the injunction against infringement and simulation, set forth in the decree of the Circuit Court, were proper.

In dealing, however, with the question of unfair trade, it is to be remembered that the liquidator, and the French

Company to whom he sold, lawfully conducted the manufacturing business at Fourvoirie, and, of course, were entitled respectively to sell their product here. They were entitled to state that they made it and the the place and circumstances of its manufacture. In short, they were not debarred from making a statement of the facts, including the appointment of the liquidator and the French Company's succession by virtue of his sale, provided it was made fairly and was not couched in language, or arranged in a manner, which would be misleading and would show an endeavor to trade upon the repute of the Monks' cordial. It is also to be noted that the words "Grande Chartreuse" form a part of the name of the French Company which it, and the defendant as its representative, had a right to use in lawful trade. But neither it, nor the defendant, was entitled to use the word "Chartreuse" as the name or designation of the liqueur it manufactured, and in any other use of that word, or in any reference to the Monks, in its statement of the facts it was bound by suitable and definite specification to make clear the distinction between its product and the liqueur made by the Monks.

These considerations, undoubtedly, led the court below to modify the decree by inserting the words—"unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants." But this insertion was made in connection with that portion of the injunction which related to the trade-mark, and this, we think, was error. It amounted, by reason of the juxtaposition with what preceded, to a permission to the defendant to use the trade-mark "Chartreuse" or that word as the name or description of its liqueur, provided it were distinguished from the liqueur of the Monks. This was inconsistent with the decree as to the ownership of the trade-mark.

The modification, in this form, should therefore be

struck out, but more completely to adapt the remedy to conditions disclosed, there should be inserted in the fourth paragraph of the decree—in that portion which contains the injunction against unfair trade—a provision restraining the use of the word "Chartreuse" in connection with the sales of liqueur not made by the Monks, as the name of or as descriptive of the liqueur, or without clearly distinguishing it from the Monks' product.

The decree will be amended accordingly, as shown in the margin.[1]

After the decision by the court below, application was made by the complainants for an injunction against the use by the defendant, in connection with its liqueur, of the words "Pères Chartreux." The injunction was not granted, but, the parties having been heard, the court ad-

[1] 4. It is further ADJUDGED, ORDERED AND DECREED that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen and each of them be and they hereby are perpetually enjoined from using in this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the trade mark "Chartreuse" or any colorable imitation thereof—or the fac-simile signature of L. Garnier or any colorable imitation thereof—or any of the trade marks above referred to or any colorable imitation thereof; and they and each of them are likewise perpetually enjoined from importing or putting out or selling or offering for sale, directly or indirectly within this country *or in any possession thereof*, any liqueur or cordial not manufactured by complainants in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any label or symbol like or substantially similar to those appearing on "Complainants' Exhibit Defendant's Liqueur," being the bottle now on file as an exhibit in this Court—*and from using the word "Chartreuse" in connection with the importing, putting out, or sale of such liqueur or cordial, as the name of or as descriptive of such liqueur or cordial, or without clearly distinguishing such liqueur or cordial from the liqueur or cordial manufactured by the complainant*—and from in any wise attempting to make use of the good will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

judged the defendant in contempt and imposed a fine. The order was reversed by the Circuit Court of Appeals, and the complainants have applied for a writ of certiorari, which is granted.

In the opinion of the Circuit Court of Appeals upon the appeal from the decree on the main issue, there were set forth two forms of labels which, it was suggested, might properly be used by the defendant, printed in any language. In the contempt proceeding it was shown that the defendant followed closely one of these forms, but used in place of the words "Carthusian Monks," as these there appeared, the description "Pères Chartreux."

In view of the language of its opinion, and the permission it implied, it is clear that the court rightly held that the defendant should not be fined for contempt. But, in saying this, we do not wish to be understood as approving the suggested forms of labels, for they seem to us objectionable in view of the arrangement of the inscription and the special prominence given to the words "Grande Chartreuse." Nor does the making of a fair and adequate statement as to the liqueur of the defendant, its origin and manufacture, require the use of the words "Pères Chartreux," and we are unable to escape the conclusion that such use, in the manner shown, was to serve the purpose of simulation, and to draw to the defendant's liqueur the reputation of that of the Monks, contrary to the provisions of the decree.

For the reasons we have stated, the order of the court below in the contempt proceeding is affirmed, but without prejudice to any future application.

The decree is reversed and the cause is remanded with directions to enter a decree in favor of the complainants, amending the decree entered in the Circuit Court in accordance with this opinion; and the order in the contempt proceeding is affirmed without prejudice to any future application.